United States Court of Appeals for the Second Circuit



APPENDIX

ORIGINAL

761067

B P/s

United States Court of Appeals For the Second Circuit

UNITED STATES OF AMERICA,

Appellee.

-against-

VINCENT DeVITO,

Defendant-Appellant.

On Appeal From The United States District Court For The Southern District of New York

Appellant's Appendix

PETER J. PELUSO and ARNOLD E. WALLACH Attorneys for Defendant-Appellant 11 Park Place New York, N.Y. 10007 (212) 227-0959



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DOCKET ENTRIES

3-14-75	Filed indictment and ordered sealed. B/W ordered. Pollack, J.
3-18-75	Indictment ordered unsealed. Pollack, J.
3-31-75	Case adjourned to 4-7-75 for deft John Dinino BRIEART, J
3-31-75	DEF'T DE VITO - (Att'y Viviani present) - Pleads Not Guilty. Case assigned to J. Griesa. Motions ret. in 10 days. Bail at \$5,000 P.R.B BRIEANT, J
4-1-75	Filed Notice of Appearance for Deft Vincent De Vito - For arraignment only - Arthur J. Viviani, 1290 Ave. of the Americas, NYC 10019 - Tel. No. 586-6006
4-9-75	Filed Notice of Appearance for Def't John Dinino - Oscar A. Bloustein, 200 Madison Ave. NYC - Tel. No. 532-9194.
4-7-75	DEF'T JOHN DININO - (Atty (scar Bloustein present). Def't pleads NOT GUILTY - Bail continued COOPER, J
	papers received from Magistrate Raby (Mag. No. 75-428) - Docket Entry Sheets (2) - Indictment Warrants (2) - Disposition Sheet (1) - Appearence Bonds (2).
10-17-75	JOHN DENINO-Deft Not Present-Conf. held-Trial Dated Declist-GRIESA, J.
11-5-75	VINCENT DEVITO-Filed Deft's affdvt & Notice of Motion for an order dismissing the indictment
11-13-75	Filed Govt's Notice of Readiness for Trial.
11-17-75	Both Defts-Govt's Affdvt. in response to defts.' motion to dismiss indictment.
11-20-75	Filed transcript of record of proceedings dated April 11, 1975.
11-20-75	Filed transcript of record of proceedings dated Oct. 17, 1975.
12-1-75	BOTH DEFTS - Jury trial begunDeft DeVito motion to dismiss denied

DOCKET ENTRIES

12-2-75	Trial cont'd.
12-3-75	Trial cont'd.
12-4-75	Trial cont'dCOUNT 3 DISMISSED by Court.
12-5-75	Trial cont'd. and concludedJURY FINDS deft DININO GUILTY on Counts 1, 2, 4, 5 and 7. Not Guilty count 6Deft DeVito GUILTY on Counts 1, 2, 4, 5 and 7 and Not Guilty on Count 6Sentences adjd to Jan. 20 75 at 9: a.m. P.S.I. ordered Bail cont'd as to both defts Griesa, J
1-20-75	JOHN DININO-Filed Judgment (Atty. Oscar Bloustein, present) the deft is committed for imprisonment for a period of ONE YEAR on each of counts 1, 2, 4 and 5 to run concurrent with each otherimposition of sentence is suspended on Count 7 and is placed on Probation for a period of TWO YEARS to be CONSECUTIVELY with prison sentence imposedDeft. is released on bail pending appealGriesa, J (Ent. on 1-21-76)
1-20-76	VINCENT DE VITO - Filed Judgment (Atty. Peter Peluso, present) the deft is committed for imprisonment for a period of ONE YEAR on each of Counts 1, 2, 4 and 5 to run concurrent with each other, imposition of sentence is suspended on Count 7 and deft is to be placed on Probation for a period of TWO YEARS to be served CONSECUTIVELY with prison sentence imposedDeft is released on bail pending appealGriesa, J (Ent. on 1-21-76)
1-28-75	VINCENT DeVITO-Filed notice of agreel from judgment dated 1-20-76Copy given to U.S. Atty's office and mailed to Peter J. Peluso counsel to deft
1-30-76	JOHN DININO - Filed notice of appeal from judgment dtd. 1-20-76Copy given to U.S. Atty. and mailed to deft at 16 Lorna Lane, Munsey, N.Y.
2-9-76	Filed transcript of proceedings dated December 1,2,3,4,5, 1975 and January 20-1976.

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA.

INDICTMENT

75 Cr.

JOHN DININO and VINCENT DEVITO,
Defendants.

COUNT ONE

The Grand Jury charges.

- 1. From In or about January, 1968, and continuing up to and including October, 1973, in the Southern District of New York, and elsewhere, JOHN DININO and VINCENT DEVITO, the defendants, together and with each other and with other persons to the Grand Jury unknown, unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree to commit certain offenses against the United States, to wit, to violate Title 18, United States Code, Section 894.
- 2. It was part of said conspiracy that said defendants would, and did agree to, and would and did, participate in the use of extortionate means, that is, means involving the use, and express and implicit threats to use, of violence and other criminal means to cause harm to the person, reputation, and property of Ronald Levine, Philip Jackson, Sherman Ronson, Philip Cassesse, Charles Penker, Sidney Shalkin, and Samuel Herskowitz, in order to collect and attempt to collect extensions of credit from said persons and to punish said persons for the nonrepayment thereof.

- 3. Among the means whereby the defendants would carry out their agreed upon unlawful purposes were the following:
- (a) The defendant JOHN DININO would loan certain sums of money at rates of interest exceeding 50% per annum to Ronald Levine, Philip Jackson, Sherman Ronson, Philip Cassese, Charles Penker, Sidney Shalkin, and Samuel Herskowitz.
- (b) the defendant JOHN DININO would collect, and direct the defendant VINCENT DEVITO to collect, weekly payments of money which the defendant JOHN DININO claimed were owing to him by Ronald Levine, Philip Jackson, Sherman Ronson, Philip Cassese, Charles Penke, Sidney Shalkin, and Samuel Herskowitz.
- (c) The defectants JOHN DININO and VINCENT DEVITO would make express and implicit threats of physical injury to Ronald Levine, Philip Jackson, Sherman Ronson, Philip Cassese, Charles Penker, Sidney Shalkin, and Samuel Herskowitz in the course of collect and attempting to collect said payments, and for the purpose of inducing Ronald Levin, Philip Jackson, Sherman Ronson, Philip Cassese, Charles Penker, Sidney Shalkin, and Samuel Herskowitz to make said payments.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendancs, in the Southern District of New York, committed and caused to be committed the following overt acts, among others:

1. In or about January, 1969, the defendant JOHN DININO met with Sherman Ronson at the Carter Cab Company, 6087 Broadway, Bronx, New York.

7. In or about the months of April, May, and June,
1972, the defendant VINCENT DEVITO met with Philip Cassese at the
Carter Cab Company, 6087 Broadway, Bronx, New York.

(Title 18, United States Code, Section 894)

COUNT TWO

The Grand Jury further charges:

From in or about January, 1968, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DININO and VINCENT DEVITO, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use and express and implicit threats of use, of violence and other criminal means

Levine, in order to collect and attempt to collect extensions of credit from said Ronald Levine and to punish said Ronald Levine for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT THREE

The Grand Jury further charges:

From in or about January, 1969, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DINENO and VINCENT DEVITO, the defendants, unlawfully, willfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property of Sherman Ronson, in order to collect and attempt to collect extensions of credit from said Sherman Ronson and to punish said Sherman Ronson for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT FOUR

The Grand Jury further charges:

From in or about October, 1970, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DININO and VINCENT DEVITO, the defendants, unlawfully, *** means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal

means to cause harm to the person, reputation and property of Sidney Shalkan, in order to collect and attempt to collect extensions of credit from said Sidney Shalkan and to punish said Sidney Shalkan for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT FIVE

The Grand Jury further charges:

From in or about October, 1971, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DININO and VINCENT DEVITO, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property of Sidney Shalkan, in order to collect and attempt to collect extensions of credit from said Sidney Shalkan and to punish said Sidney Shalkan for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT SIX

The Grand Jury further charges:

From In or about March, 1971, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DININO and VINCENT DEVITO, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property

of Charles Penker, in order to collect and attempt to collect extensions of credit from said Charles Penker for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

COUNT SEVEN

The Grand Jury further charges:

From in or about January, 1970, up to and including in or about October, 1973, in the Southern District of New York and elsewhere, JOHN DININO and VINCENT DEVITO, the defendants, unlawfully, wilfully and knowingly did participate in the use of extortionate means, that is, means involving the use, and express and implicit threats of use, of violence and other criminal means to cause harm to the person, reputation and property of Phili Cassesc, in order to collect and attempt to collect extensions of credit from said Philip Cassesse and to punish id Philip Cassese for the nonrepayment thereof.

(Title 18, United States Code, Section 894)

s/ Charles E. Fink 3/14/75

d's

s/ Paul J. Curran
PAUL J. CURRAN
United States Attorney

A	JUDGMENT	3
	VINCENT DE VITO	75 Cr 265
2	UUDOMENTANDPROBATION/COMMITME	NT-ORDER AND TO THE
	In the presence of the attorney for the government the defendant appeared in person on this date	January 20, 1976
COURSEL	WITHOUT COUNSEL However the court advised defendant of right to counse have counsel appointed by the court and the defendant there	eupon waived assistance of counsel.
	WITH COUNSEL LPeter Peluso, Esq. and Arnold Wa	allach, Esq.
PLEA	GUILTY, and the court being satisfied that L NOLO CONTENDERE there is a factual basis for the plea,	NOT GUILTY
	There being a finding/verdict of \(\sum_X \) GUILTY. Defendant is discharged \(\sum_X \) GUILTY.	
FINDING & JUDGMENT	Defendant has been convicted as charged of the offense(s) of unlawfully, will participating in the use of extortionate means, that is, and express and implicit threats of use, of violence and to cause harm to persons, reputations and property of sa to collect and attempt to collect extensions of credit f said persons for the nonrepayment thereof, and conspiring in Counts 1, 2, 4, 5 and 7. 18, USC, §894	n involving the use d other criminal means aid persons in order from, and to punish
SENTENCE OR PROBATION ORDER	The court asked whether defendant had anything to say why judgment should not be pronounced was shown, or appeared to the court, the court adjudged the defendant guilty as charged and chereby committed to the custody of the Attorney General or his authorized representative for impose YEAR on each of Counts 1 concurrent with each other. Imposition of sentence is and defendant is to be placed on Probation for a period served consecutively with prison sentence imposed. Defendant is released on bail pending appears.	convicted and ordered that The defendant prisonment for a period of 1, 2, 4 and 5 to run suspended on Count 7 of TWO YEARS to be
SPECIAL CONDITIONS OF PROBATION	MICROFILM JAN 2 1 197	BEST COPY AVAILABL
ADDITIONAL CONDITIONS OF PROPATION	In addition to the special conditions of probation imposed above, it is hereby ordered that the reverse side of this judgment be imposed. The Court may change the conditions of probation, red any time during the probation period or within a maximum probation period of five years permanents for a violation occurrence during the probation period.	uce of extend the period of exchange

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT RECOMMEN

It's ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Mara, shal or other qualified officer.

SIGNED BY

EDITOR'S NOTE

when obtained, a corrected fiche will be forwarded to you.

.

POMPTMENT ACCOMMEN-DATION

-	JOHN DININO		75 Cr 265
	MINGMENT AND PROBAMON	COMMITMENT	ORDER TO THE
	In the presence of the attorney for the government the defendant appeared in person on this date		January 20, 1976
COUNSEL	WITHOUT COUNSE!. However the court advised de have counsel appointed by the counsel appointed by	fendant of right to counsel an ourt and the defendant thereupor	d asked whether defendant desired waived assistance of counsel.
	WITH COUNSEL LOscar_Blous	(Name of counsel)	
PLEA	GUILTY, and the court being satisfied that there is a factual basis for the plea,	NOLO CONTENDERE,	NOT GUILTY
=	There being a finding/verdict of \(\times \text{NOT GUILTY.} \) \[\times \text{X} \text{ GUILTY.} \]	Defendant is discharged	
FINDING & JUDGMENT	Defendant has been convicted as charged of the offense(s) of participating in the use of extortional and express and implicit threats of use to cause harm to persons, reputations a to collect and attempt to collect extensaid persons for the nonrepayment there in Counts 1, 2, 4, 5 and 7. 18, USC, §894	te means, that is, i e, of violence and o and property of said asions of credit fro	nvolving the use ther criminal means persons in order m, and to punish
SENTENCE OR PROBATION ORDER	The court asked whether defendant had anything to say why judgm was shown, or appeared to the court, the court adjudged the defendant served committed to the custody of the Attorney General or his authorized to the custody of the Attorney General or his authorized concurrent with each other. Imposition and defendant is to be placed on Probate served consecutively with prison senter Defendant is released on bail pendant.	ndant guilty as charged and con- norized representative for imprise on each of Counts 1 n of sentence is sus- tion for a period of nce imposed.	nicted and ordered that: The defendant onment for a period of , 2, 4 and 5 to run pended c Count 7
SPECIAL CONDITIONS OF PROBATION	VI CROFILN		OT CODY BYSH EDIT
	FILM FILM	T RF	ST COPY AVAILABLE
ADDITIONAL CONDITIONS OF PROBATION	any time during the probation period or within a maximum probation for a violation occurring during the probation period.	it is hereby ordered that the gen the conditions of probation, reduc- tion period of five years permitt	ted by law, may issue a warrant and revo
COMMENTAL STATE OF THE STATE OF	The court orders commitment to the custody of the Attorn		

* '' 	
UNITED STATES OFAMERICA,	Docket Number 75-CR-265
-against-	HON. THOMAS P. GRIESA
VINCENT DeVITO,	(District Court Judge)
Defendant.	73
	. 2 10
	NOTICE OF APPEAL
Notice is hereby given that VIN	CENT DeVITO appear
	he Second Circuit from the & Judgment _order _ other
(specify) of Conv	entered in this action on <u>January</u> 20th, 1976 . (Date)
T., 28,671	PETER J. PELUSO ESQ. & (Counsel for Appellant) Address ARNOLD E. WALLACH ESQ.
To Thomas I Calvill	11 PARK PLACE NEW YORK CITY, N.Y. 1000?
To Thomas J. Canill 1 St Andrews P	a: a! Mr. eleveto
New York, N.V.	212-8767792
, , , ,	Phone Number 212-2270959 Suffered Ct.
ADD ADDITIONAL PAGE IF NECESSARY	TRANSCRIPT INFORMATION - FORM B
(TO BE COMPLETED BY ATTORN	DESCRIPTION OF PROCEEDINGS
■ QUESTIONNAIRE	TRANSCRIPT ORDER
X I am not ordering a transcript	Prepare transcript of Pre-trial proceeungs
Reason:	Trial
XX Daily copy is available	Sentence Post-trial proceedings
U.S. Attorney has placed order Other, Attach explanation	INKNANNARANARANARA
The ATTORNEY certifies that he will make s	atisfactory arrangements with the court reporter for payment of the cost of ayment & Funds CJA Form 21
ATTORNEY'S signa (1)	DATE
The state of the	January 27th, 1976
COURT REPORTER AC	To be appointed by Court Banarias and
Date order received Estimated comp	etion date Estimated number of pages.
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be credible, believable, and you determine whether or not the Government has proven their case beyond a reasonable doubt.

So if I do nothing more but alert you to the fact now that you should keep your mind open and listen to the evidence, I will ask you to do that and I will return to you at the end of the case to prove to you, to argue with you that the Government has failed to prove a case beyond a reasonable doubt.

Thank you very much.

MR. PELUSO: If the Court please, the defendant DeVito waives an opening statement at this time.

THE COURT: The Government.

MR. ABZUG: The Government calls Philip Jackson.

PHILIP JACKSON, called as a witness in

behalf of the Government, being first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

- Q Mr. Jackson, how old are you, sir?
- A 45.
- Q Directing your attention to early 1970 were you employed, sir?
 - A In early 1970? Yes.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

John Dinino?

A Yes, I do.

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Q Is John Dinino in the courtroom today?

4

A Yes, he is.

5

O Could you please identify him to the Court and jury.

6

A Yes; he's the man sitting there in the red jacket.

8

MR. ABZUG: Your Honor, let the record reflect

9

that the witness has identified the defendant John Dinino.

10

When did you first meet Mr. Dinino?

11

A I met Mr. Dinino late in 1970.

12

0 Where, sir?

13

A In Al's Car Service.

14

O Could you describe to the jury the circumstances leading up to your first meeting with the defendant Mr.

15

Dinino?

individuals.

Fridays.

17

A Well, I had started working for Al's Car Service,

18

as I said, in early 1970, and, as I said, I worked there

19

seven days a week, and during the nine or ten months prior to speaking to Mr. Dinino I had noticed him on many occasions

20

in the car service collecting and giving money to different

22

0 When? Can you specify a date?

23

A Well, he used to come Mondays, Wednesdays and

A Well, as I said, I was working there and from observing Mr. Dinino giving and taking money from different individuals in the short time I found out that he was the

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local Shylock in the area.

MR. PELUSO: I am going to object to that, Judge.

THE COURT: Yes, sustained. Strike that.

- O Do you know a man by the name of Louis Materasso?
- A Yes, I do.
- Q Did there come a time when you had a conference -THE COURT: Wait a minute. What is this name?

 MR. ABZUG: Louis Materasso.
- O Did there come a time when you had a conversation with Mr. Materasso?
 - A Yes, there did.
 - 0 Where did this conversation occur, sir?
 - A In Al's Taxi.
 - Q Approximately when did it occur, sir?
- A Oh, it occurred in late 1970.
 - Q What did you say to him and what did he say to you?

MR. WALLACH: Objection, your Honor.

MR. ABZUG: Your Honor, this is being offered solely for the purpose of showing motive and intent of the witness in his meeting with John Dinino. The Federal Rules of Evidence sub-section 3 of Rule 803 provides that such testimony may be admissible.

THE COURT: Let me look at that. What Sub-

	***** 23
1	23 cmsr Jackson - direct
2	from John Dinino and arranged a meeting with Mr. Dinino.
3	It prefaces the meeting.
4	THE COURT: Then will he testify that he went
5	with
6	MR. ABZUG: Mr. Materasso then had a conver-
7	sation with
8	THE COURT: All right, I will overrule the
9	objection.
10	MR. WALLACH: Your Honor, may I request that
11	the U. S. Attorney not argue in the presence of the jury?
12	He made an offer of proof in the presence of the jury.
13	THE COURT: It was just the discussion of the
14	rule. If we can avoid all these side bars it would be
15	helpful.
16	All right.
17	MR. WALLACH: Exception.
18	[In open court:]
19	MR. ABZUG: May I proceed, your Honor?
20	THE COURT: Yes.
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22	
23	Materasso in late 1970 at Al's Taxi. What did he say to
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2	N Well, I had been gambling heavily, and I needed

2 money

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money, and as I said from my observances over the months that I had been working there --

THE COURT: He is asking you what was said.

THE WITNESS: Okay. I'm sorry.

THE COURT: That's all.

A I went to Mr. Materasso and I asked him to please ask John DeVito if he would lend me money.

O And what did Mr. Materasso respond?

A He told me he would speak to him and he would make an appointment for me to speak to John DeVito.

Q Is it John Dinino or John --

A John Dinino, I'm sorry.

MR. PELUSO: Your Honor, I am going to respectfully object to what the District Attorney just did.

THE COURT: Overruled.

O Did you subsequently meet John Dinino?

A Yes, I did.

O Where, sir?

A I met him in the candy store two doors down from Al's Taxi.

O When, sir?

A The subsequent -- the following -- well, it was on a Monday evening because I had spoken to Materasso on the Friday about it.

FOLEY QUARE NEW YORK, NY. - 791-1020

For example, if I borrowed \$100, I'd have to give him \$5 a week back for as long as I kept the \$100.

The loan would end when I paid him the principal of \$100 back.

. So that if I took the money, the \$100, and I kept it for a year I would be giving him \$5 a week for a year back, and then still owe him the \$100. If I took it and paid him back the \$100 two weeks later I would have given him \$10 in interest and his \$100 back.

Q What was the second type of loan?

A The other type of loan was a 6 for 5 loan it is called. I would borrow -- if I borrowed \$200 I was obligated to pay him --

THE COURT: Say, let's not have the paper shuffling back there. Let's have it quiet in the courtroom.

Q I'm sorry, Mr. Jackson. Please proceed.

A The other type loan was a 6 for 5 loan, or if

I borrowed \$100 I would have to pay him back \$120 in payments

of \$20 a week for six weeks. And if during the six weeks,

if I didn't make the \$20 payment, I would have to give him

\$6 and the \$20 would go on to next week.

O Did you at that time, sir, make a selection between these two loans?

A Yes. I chose the "Vig Loan", the first one I

had explained.

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Q What, if anything, did you receive at that first meeting?

A I didn't receive anything. At the first meeting he told me he would go back and find out if it was approved and he didn't see any reason why it wouldn't be, and told me I could expect the money by the end of the week.

Q Following this conversation with John Dinino did you have a subsequent meeting with John Dinino?

Α

O When, sir?

A On that Friday of that week.

O Where, sir?

A Well, he met me in Al's Taxi and took me outside.

O Did you have a conversation with him?

A Yes.

Ω Approximately what time of the day?

A Well, it had to be late in the afternoon, around 5, 5:30.

Q What did you say to him and what did he say to you?

A He told me my loan was okay, and he gave me the \$200 and explained to me again the arrangements which was every Friday I would give him \$10 for as long as I wanted

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

What, if anything, did John Dinino say?

Where did this conversation occur?

payments each week on time.

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At Al's Taxi.

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A He again told me that he would let me know the next time he came back, and if everything was all right, he would give me the additional \$300.

THE COURT: You were paying him how much?
You borrowed \$200?

THE WITNESS: I had a \$200 loan I was paying him \$10 a week for, and I asked him to increase it to \$500 which would have made my payments \$25 a week.

- Q Following this conversation that you had with Mr. Dinino did you see him again?
 - A Yes.
 - When, sir.
 - A As I said, I saw --

THE COURT: I am sorry, what was his response to your question?

THE WITNESS: His response was that he would give me the additional \$300.

- Q When was this, sir?
- A The Friday of the same week.
- Q How did he give you this \$300?
- A He gave it to me in cash, and to the best of my recollection it was twenties and tens.
- Q Following this second loan did you have another meeting with John Dinino?

1	30 cmsr	Jackson - direct
2	, A	Yes, I did.
3	Q	Where was this, sir?
4	A	In Al's Taxi.
5	Q	Who was there?
6	A	Well, there were other drivers there. Mr.
7	Dinino and	I were there.
8	Q	Approximately when did you have this other
9	meeting?	
10	A	It would have been in late Spring of '70. In
11	April, are	ound then, April or May.
12	Q	Did you have a conversation with Mr. Dinino?
13	A	I'm sorry, '71, not '70.
14	Q	Did you have a conversation with Mr. Dinino?
15	A	I did.
16	Q	What did he say to you and what did you say to
17	him?	
18	A	I told him I wanted to borrow more money and
19	that I ha	ad been paying my first loan off on time each week,
20	and that	I would be able to handle an additional loan because
21	I was wor	rking there seven days a week and it wouldn't be a
22	hardship	for me to be able to pay him, and I requested
23	\$500 mor	e on the second type of loan.
24	0	Now, what was the second type of loan, sir?

The one I explained, 6 for 5.

THE WITNESS: The second loan?

due each week on the - -

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a week.

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THE COURT: [continuing] -- on second loan?

THE WITNESS: Second loan woul' have been \$40

THE COURT: \$40.

Following this conversation did you see Mr.

Dinino again?

Yes.

Where, sir?

At Al's Taxi.

Approximately what time, sir?

Well, as I said, he always came in between fourthirty and six o'clock.

Q What would transpire at these meetings?

Well, on Fridays I would pay him ... 15 -- I would pay him at that time I would have been giving him \$65. \$25 for the first loan and \$40 on the second loan for a period of six weeks.

Q How long did you continue making these weekly payments to Mr. Dinino at these rates?

A Well, I would pay Mr. Dinino -- the \$25 payment continued all along. The other payment, the \$40 kept fluctuating. Two or three weeks would go by and I would pay him \$80 or \$120 on the second loan, and at that time I would ask him to renew the second loan.

In other words, if I paid him back \$120 and I had owed him \$20, he could reimburse me and build it up to \$200. And at that time I also requested him to increase the loan to \$500, the second loan.

THE COURT: I want to get this clear. You kept paying him the \$25 regularly?

THE WITNESS: Every week.

THE COURT: What happened on your 6 for 5 loan?

THE WITNESS: That loan lasted six weeks. I borrowed \$200 originally from him and I paid him \$40 a week. If I had paid him for six weeks that loan would have been wiped out. I never paid him for the six weeks, because I kept renewing the loan at the end of three or four weeks and bringing the principal back up to \$200 again.

THE COURT: Well, did you pay him regularly the \$40 a week?

THE WITNESS: Yes. On occasion if I missed
the \$40 I would have had to pay him \$12 for missing the
payment. But at the beginning at that time in the relationship I was paying him regularly. I would pay him the \$40.
BY MR. ABZUG:

Q How many times, sir, did you renegotiate this second type of loan?

A Well, I'd say close to a dozen over the period

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of the year or so.

be for the jury?

took out in the beginning of '71. The second loan I took out in the Spring approximately of '71, and by late Spring I had increased the second loan to \$500. So by late Spring, or early summer, I had owed Mr. Dinino \$500 on that first loan that I took out at the beginning of the year, which I was paying \$25 a week for, and on the second loan eventually by the summer I had owed him \$500 and was paying him \$60 a week for ten weeks. Started making the payments in ten week periods rather than in six week periods.

Q Could you specify what period of time that would

So in fact I was giving him back for the \$500 I paid him \$60 a week for ten weeks, I would be giving him back \$600 for his \$500.

- o uring this period extending from early '71 to approximately the Fall of '71, how often would you see John Dinino?
 - A Almost every Monday, Wednesday and Friday.
- Q What, if anything, would transpire at these meetings, sir?
- A When I saw him I paid him my money. At other times I saw him when it wasn't my day to pay him we had no --

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nothing to do with each other, and I just saw him collecting from other people who had a different payday. Different day they had to make their payment.

Q Who were some of these other people that you saw pay money to John Dinino in this period of early 1971 to the Fall of 1971?

A Sidney Shalkin, Tommie Brando, Louis Materasso, Sherman Ronson, Phil Cassesse.

Q During this same period, sir, did you make payments to anyone else?

A Yes.

Q Who, sir?

A Mr. Dinino had a partner named Vinnie.

MR. WALLACH: Objection to the word "partner,"
your Honor. That calls for a conclusion.

THE COURT: Yes. Strike that. You tell us what you observed.

A [continuing] Well, on one occasion Mr. Dinino brought in another gentleman who was called Vinnie.

Q Is Vinnie in the courtroom today, sir?

A Yes, he is.

Q Would you identify him for the jury, please.

A Sitting at the end of the table.

MR. ABZUG: Let the record reflect, your Honor,

THE COURT: All right.

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THE WITNESS: It was in the cab stand.

THE COUPT: All right. What was said by whom?

THE WITH SS: Mr. Dinino came in and introduced

Mr. DeVito to myself and the other fellows there and explained
that this was his partner and from now on either he or his
partner would come down to make collections.

Q Subsequent to that first conversation did you see Mr. DeVito again?

A Yes.

Q When, sir?

A Well, it started out that for a two-week period or so Mr. Dinino would come, and then for two weeks Mr.

DeVito would come. They took turns coming.

- Q Did you actually make payments to Mr. DeVito?
- A Yes.
- Q You mentioned that you saw Mr. Dinino meet with other cab drivers at Al's Taxi. Did you ever overhear any of their conversations, sir?
 - A Yes.
 - Q What, if anything, was said?
 - Well, he'd come into the cab stand --

MR. WALLACH: Objection to the use of the word "he", your Honor. Re should specify which, who the talker is.

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MR. ABZUG: I specified in the question, your Honor, John Dinino.

O What was said?

A Mr. Dinino would come in on most every occasion to the cab stand to collect money, and he would go over to individuals such as myself or the others that I named, and ask them for their payments. In cases when they weren't there, he either would leave word that I'll tell so and so and I'll be back on Wednesday, or, tell him to leave his money, or on occasion when they were there and they didn't pay on their particular day he would tell them that they had better have their money the next time, or, I'd see you next time. If they didn't pay on the second trip, he got a little more aggressive with them or --

MR. BLOUSTEIN: I object to that, your Honor.

THE CGURT: Yes. What was said? What was said?

THE WITNESS: Well, I heard on occasion him tell somebody who was behind a week that I'll be back next week, I don't want to hear any more bull shit, I don't want your payment and I don't want to hear any more stories.

Now, what were the reasons you borrowed money from Dinino?

A Me personally?

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Jackson - Girec	Jackson	-	d	ir	ec	t
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Q		Now, sir, yo	ou indicat	ted that	in th	e Fall of	'71
you had	a	conversation	with Mr.	Dinino	about	gambling;	is
that co	rr	ect?					

- A Yes.
- 0 Where did this conversation occur?
- A In Al's Taxi.
- O Who was there?
- A Mr. Dinino and myself.
- Q Approximately what time did it occur, sir?
- A It had to be again, it had to be always between 4:30 and 6.
- Q What did he say to you and what did you say to him?
- A Well, I asked him for -- I asked him, I had been paying these two loans off that I described to you, and I asked him for an additional loan. I was gambling losing money and I needed more money and I asked him if he would lend me some more money.
 - Q What did he respond, if anything?
- A He told me he couldn't, that I had readhed my limit, on both loans.
- Q What, if anything, were your payments at that time to Mr. Dinino and Mr. DeVito?
 - A At that time I was paying \$25 on the \$500 Vig

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Loan and I was paying \$60 on the \$500 loan. I was paying a total of \$85 a week.

Q What if anything, sir, did you do as a result of this conversation with HE. Dinino?

A Well, I had a friend at Al's Taxi who hadn't as yet borrowed money from Mr. Dinino, and I asked him if he would go to Mr. Dinino and borrow \$500.

- Q What was this friend's name, sir?
- A Ronnie Levine.
- Q What happened after that?
- A I asked him if he would borrow \$500 from Mr. Dinino and give it to me and I would make the payments for him. And Mr. Dinino would never be aware of the fact that he had loaned it really to me.
 - Q What happened then?
- A Ronnie Levine spoke to Mr. Dinino and two or three days later gave me the \$500.
 - Q Where did he give you the \$500, sir?
- A He met with Mr. Dinino in the candy store next to Al's Taxi. He was there a few minutes and came out and gave me the \$500.
- Q Following receipt of this \$500 loan that for convenience sake we will call the Levine loan, did you see Mr. Dinino again?

a couple of weeks, I would be able to get the money then and

What did he say to you and what did you say to

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Yes.

0

him?

Jackson - direct

Well, on the very next evening you are talking

Yes.

Nothing really. He just, as I said, on Tuesday evening I had lost the \$1,800, and I had indicated to him that it would take me two weeks to get his money and he went along with that. So the following evening, on a Wednesday when he came in we didn't have much to say, it was just the regular meeting that he came by to collect from the fellows.

Q Did you subsequently discuss the \$1,800 gambling debt that you owed to Mr. Dinino?

Yes.

Q When was this, sir?

A Two weeks later from the first time I had met him about it.

Q What did you say to him and what did he say to you?

A He asked me for my money, as I promised him, and I tried to stall him and tell him that I wasn't able to raise the money, but not to worry, I certainly would get it for him, but it would take maybe another week or two more.

Q What did Mr. Dinino respond?

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A He wasn't satisfied with that. He told me that it wasn't for his money and he was working for an office and he wasn't responsible and he didn't want to hear any more stories and he wanted his money and expected me to have it on Friday when he returned for his normal payments from me on my other loans.

O What did you do after that, sir?

A Well, right after that I got very worried and concerned and frightened, because I had no way of --

MR. BLOUSTEIN: I object to that, your Honor.

THE COURT: Strike that, please. Just tell us what happened.

MR. ABZUG: Your Honor, if I may interject, I believe that the witness' state of mind is somewhat relevant in this case.

THE COURT: No, not at this point, please. Let's just have the events.

Q After this conversation what did you do, sir?

A Well, I went directly the next evening to Gambler's
Anonymous, and I had some people who I had --

THE COURT: Let me see the lawyers up here for just a minute.

[At the side bar:

THE COURT: I assumed when I let you go into the

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Jackson - direct

THE COURT: We'll cover that. All right.

MR. WALLACH: Your Honor, when they are finished with direct can we have a short recess? We just got the Jenks material and some of it is illegible.

THE COURT: All right. Sure, you can.

[In open court:]

MR. ABZUG: May I proceed, your Honor?

THE COURT: Yes.

BY MR. ABZUG:

Q Following the last conversation that you had with Mr. Dinino in which you discussed the \$1800 gambling debt -- incidentally, in that conversation did you discuss your loans as well, sir?

A I don't follow you.

Q In other words, the last conversation that you had with Mr. Dinino where you testified that he demanded the repayment of the \$1,800, did you discuss your loans with him as well in that conversation?

A No.

Q All right.

Now, following that conversation did you have another meeting with Mr. Dinino?

A Yes.

Q Where was that, sir?

Whete was to

places?

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Again, outside of Al's Taxi.

How soon after the last meeting that you testified to?

The following time he came. Probably on a Wednesday. Immediately after. Two days after.

And what did you say --Q

THE COURT: Excuse me. Could you just hold yo r

All right, go ahead.

MR. AND 'JG: Thank you, your Honor.

What did you say to him and what did he say to Ju?

I told him that I had spoken to someone who he had knew and that they would -- either had contacted him by then or would contact him that I couldn't pay him the \$1,800, that I had lied to him about stalling him and that I just couldn't meet the other payments I had also, and I proposed that I take -- proposed that I pay him a lump sum figure each week and pay him that to pay off the two loans plus the \$1,800.

- When you say the other payments, sir, payments on what?
 - On my two loans.
 - What figure did you propose, sir?

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A I proposed \$25 a week.

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Q What, if anything, did Mr. Dinino respond?

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\$25 a week I would be paying him for two or three years and

He told me I was crazy and that if I paid him

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that it was out of the question. Not to even think about

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it. That he wouldn't even discuss it with me.

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THE COURT: I'm sorry to interrupt, but in this

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conversation did you say that you revealed the Levine situ-

10 ation?

THE WITNESS: No, I didn't in this conversation.

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I confessed to him, I told him I couldn't pay him the

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\$1,800 at all and I couldn't continue paying him the money

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on my two loans and that I asked him to consolidate the

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gambling debt and the two other loans all in one, and that

I would pay him \$25 a week until the whole debt was paid

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off.

Q And he responded what, sir?

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A He didn't even want to know about it, that I

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was crazy or out of my mind, and he didn't even want to discuss it and I had better come up with a better figure,

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more like \$100 a week.

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Q How did this conversation make you feel, sir?

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MR. BLOUSTEIN: I object to that.

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MR. WALLACH: Objection.

- 11		, 55
1	55 cmsr	Jackson - direct
2		THE COURT: Yes, sustained.
3	Q	Following that conversation did you have another
4	meeting wit	h Mr. Dinino?
5	A	Yes.
6	Q	Where, sir?
7	A	In front of Carter Cab Company.
8	Q	How soon afterwards?
9	A	On Friday night. I spoke to him on a Wednesday,
10	and the nex	t conversation was on Friday.
11		THE COURT: In other words, the conversation
12	you were ju	ist telling us about was on a Wednesday.
13		THE WITNESS: Right.
14		THE COURT: All right, go ahead. On Friday
15	another cor	nversation.
16	Q	Where is Carter Cab located, sir?
17	A	It's in the Bronx on Mosholu Avenue. It's five
18	blocks nor	th of Al's Taxi.
19	Q	Where did you have this conversation?
20		THE COURT: Carter Cab?
21		THE WITNESS: Carter Cab, yes, C-a-r-t-e-r.
22	Ω	where did you have this conversation sir?
23	A	In Mr. Dinino's car.
24	Q	Was anybody else present?
	11	

No.

Q What was srid, sir?

A Well, Mr. Dinino was sitting in his car and I got into his car and I told him that I'm sure by now he had spoken to my friend in Gambler's Anonymous and that I wanted him to know again that I had been going back to Gambler's Anonymous and it's impossible for me to pay him the \$1,800, plus continue paying the loans that I had and that I wanted him to know also at this time that the \$500 loan that he had thought he had lent to Ronnie Levine had instead been mine and I had been making the payments on it, and when I did make a package settlement with him for whatever amount we decided on that had to be part of the package.

In other words, that Ronnie Levine loan would be encompassed in my loans, and Ronnie Levine wouldn't have to be worried about having to pay off a loan that he never really in fact took.

Q What did Mr. Dinino respond?

A He got very angry and he told me that he don't give a damn what the man in "G.A." proposed to him, and no matter what happens he won't even think of allowing Ronnie Levine to get out of his loan or for me to encompass it in mine. He told me he had given Ronnie Levine the money in his hands, and once he put it in his hands it was

THE COURT: Wait a minute. I don't want to have what Levine said that Dinino said. Just stick to what Dinino said.

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THE WITNESS: Well, Dinino at that time said nothing to me. He said something to Ronnie Levine in

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the street. I was inside.

THE COURT: All right.

THE WITNESS: And then Ronnie Levine came in and said something --

THE COURT: All right, we won't get into that.

THE WITNESS: Because of Ronnie Levine coming in to me and saying something to me I went outside to Dinino.

THE COURT: All right.

THE WITNESS: And from what Ronnie Levine had said to me I went outside to Dinino and said certain things to him.

What did you say to Mr. Dinino?

Well, I told him that I had explained to him up at Carter's and I am telling him again that no matter what he says or does, what I had told him is going to be what's going to happen. Again, that Ronnie Levine's loan was part of my loan and that I was responsible for it and therefore since Ronnie Levine had never taken the money for himself, or used the money, that Mr. Dinino would have to accept my terms, and if he didn't accept my terms I wouldn't give him anything.

- What did Mr. Dinino say?
- A He told me he didn't even want to talk with me

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about it, he didn't want to hear any more, and I told him if he wants to hear it or not that's the way it's going to be, and I told him if he doesn't like it I won't pay him, and he told me, for two cents I'll bust your balls right here.

O What did you then do?

A I told him, go ahead, if that's what you're going to do. And we argued back and forth for a minute or two and nothing came of it, and he drove off and I went back inside.

Q Now, after this conversation with Mr. Dinino did you have another meeting with him?

A Yes.

Q When, sir?

A Monday or Wednesday night of the following week.

Q Where was this meeting?

A At Al's Taxi.

O Did you have a conversation with Mr. Dinino?

A Yes.

Q What did he say to you and what did you say to him?

A I agreed to pay him \$100 a month -- a week for the year on the agreement on his part that all the loans including Ronnie Levine's loan would be mine and

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the gambling debt. In other words, I agreed to give him \$100 a week for one year and that would wipe out all my indebtedness to him.

Q Why did you agree to pay \$100 a week to Mr. Dinino when you originally only proposed to pay him \$25 a week?

A Well, I was involved, and as I said, I was returning to Gambler's Anonymous at the time and I was told by them to --

THE COURT: Now look, I am not going to receive evidence about what he was told by Gambler's Anonymous or anything else, transactions that transpired outside of the presence and were not involving Dinino.

MR. ABZUG: I understand that, your Honor.

THE COURT: Now let's stick to what transpired between Mr. Jackson, Mr. Dinino and Mr. Devito, whatever that is.

MR. ABZUG: Let me rephrase the question then, your Honor.

Q What, if anything, did Mr. Dinino do that made you agree to pay \$100 to him rather than the \$25 that you originally proposed?

A Well, besides threatening to bust my balls on Friday the fact that I had owed him money through the

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I had owed him money through the bookmaking operation, and he explained to me that they were two different offices,

I was doubly frightened because I was afraid that either one of his offices that he had worked out of might come down and threaten me or do any damage, bodily damage to me.

Q All right. Now, how long did you continue making the -- did you make any \$100 payments to Mr. Dinino?

A Yes.

O How long, sir?

A About three months. About twelve or thirteen hundred dollars which would be about three months.

- Q And when would you make these payments ?
- A Every Friday.
- Q Where, sir?
- A At Al's Taxi.
- Q Did you make the payments to anyone else, sir?
- A On occasion.
- Who, sir?
- A To Mr. DeVito.
- Q What happened, if anything, after three or four months of paying him \$100 a week?

MR.WALLACH: Who is "him", Judge?

THE COURT: He just said either DeVito or

Dinino. That's perfectly plain. And this went on for -
THE WITNESS: Three months.

THE COURT: All right.

- Q What happened, sir?
- A What happened when?

 THE COURT: After the three months.

A After the three months I went to Mr. Dinino and I told him that it was impossible for me to meet this new obligation that I had of \$100 a month -- a week. I couldn't afford it. I couldn't -- I had by that time problems with my car. I had a lot of other financial burdens, and I couldn't afford to pay him \$100 a week or \$50 a week or \$25 a week, and I told him the most I could pay him is \$10 a week and I would pay him \$10 a week for as long as it took for me to clear up his loan.

- Q What did Mr. Dinino say to that?
- A He accepted it.
- Q Did you make \$10 payments subsequently?
- A Yes.
- Q To whom, sir?
- A To Mr. Dinino or Mr.DeVito, or, on occasion someone else.
 - Q When would you make these payments, sir?

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period. Who was that, sir?

A His name was Louis.

Q How did you come to meet Louis?

A Well, one particular evening Mr. DeVito --

Q Excuse me. Approximately when did this happen?

A In mid-'72.

Q Would you describe what happened?

Monday, Wednesday or Friday night, or late in the afternoon and he came over to me and whoever else was in the room at the time and told us that for the next three or four weeks this fellow Louis would be coming around and collecting instead of him, and that we should pay him the same way we paid he or Mr. Dinino.

THE COURT: You said this was Dinino or DeVito?
THE WITNESS: DeVito.

Q Who was present at this time?

A I was present there. I don't recall.

O Besides yourself.

A There were some other drivers in the room. I am not sure at the time he walked in who was there.

Q Subsequent to this time did you see Louis again?

A Yes.

was very unusual. And I asked him why he was there at that

quite early, about two o'clock in the afternoon, which

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from Sid Shalkin for approximately a week and he could never get him in, and he was making it his business that he would get him in today. He was tired of coming back looking for Sid Shalkin.

MR. BLOUSTEIN: I object to this, your Honor.

It's hearsay. Not conversation within the presence of the defendant, either defendant here.

MR. ABZUG: Your Honor, it is clear the conversation --

THE COURT: Please. Overruled.

Q Continue your recitation of your conversation with Louis.

that he was -- came early specifically to see Sid Shalkin and he was going to wait and make sure he would see him before six o'clock. And I asked him why he had to act so rough and tough, and this wasn't the roaring twenties, and why did he have to walk around as if he was a real tough guy, and that if Sid Shalkin didn't pay him the money why, he didn't have to imply or say that he would do anything to him. And at that time he walked up to me and took a revolver out of his pants and put it right to my chest and said, for two cents I'll blow your fucken

	88 cmsr Jackson - cross
2	A Well, he gave me \$500 on one occasion. He gave
3	Ronnie Levine \$500 which I used on another occasion. And
	he gave me originally \$200 on the other loan, which was
5	increased to 500 on an another occasion. So we're dis-
6	cussing \$1500.
7	Q You never did pay back all that was required
8	of you?
9	A I never paid back what?
0	Q You never paid Mr. Dinino the outstanding

A If I did I wouldn't be paying him \$10 a week.

Q Right. But in period from the Fall of 1970 to the summer of 1973 was there any physical harm that befell you?

A No.

so-called balance?

Q He never hurt you, did he?

A Hurt me?

Q Yes.

A I just said I never had any physical harm, so he didn't hurt me.

Q You sought him out, he didn't seek you out, did he?

A 'That's true.

THE COURT: This is repeating. Have you

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

		* * * * * 91	
1	92 cmsr	Jackson - cross	
2	Q	Did Tony collect money from you?	
3	A	Yes.	
4	Q	How was Tony introduced to you?	
5	A	He came down to Al's Taxi, I'm not sure if he	
6	was alone,	I think he was alone, and introduced himself	
7	to me and	other people saying that he was going to take or	ver
8	the collec	tions for John and Vinnie.	
9	Q	And with nothing more you paid Tony money?	
10	A	That's right.	
11	Q	In other words, you didn't check back with Joh	m
12	Dinino?		
13	A	No.	
14	Q	To find out whether he was authorized?	
15	A	No.	
16	Q	Did you check back to John Dinino to find out	
17	if Tony w	as authorized?	
18	A	I told you that Vinnie had brought in	
19	Q	Well, you say Vinnie, Vinnie who?	
20	A	Mr. DeVito brought in Louis and told me and	
21	(1	ple that he wouldn't be around for a while and	I
22	and other	people should pay Louis. So I paid Louis.	
23	Q	And DeVito introduced you to Louis?	
24	A	That's right.	
25	Q	But nobody introduced you to Tony?	

* * * * * Jackson - cross 97 cmsr 1 Q In other words, you were called by the Govern-2 ment to appear here not on your own accord? You were 3 subpoenaed? A I was subpoenaed, yes. 5 And the testimony you gave was testimony that 6 you didn't voluntarily give without the subpoena? 7 MR. ABZUG: Objection. 8 THE COURT: He is subpoenaed. Now really. 9 I don't know what that question would mean. 10 Anything else? 11 MR. BLOUSTEIN: I have nothing further at this 12 time, your Honor, but again I would like a chance to 13 read all the Jenks material. 14 THE COURT: All right. 15 Mr. Peluso. 16 Why don't you try to go through that other 17 material right now, Mr. Bloustein? I want to finish with 18 this witness. 19 MR. BLOUSTEIN: I am, your Honor. 20 CROSS-EXAMINATION 21 BY MR. PELUSO: 22

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Jackson - cross

A	When you say wh	hen I met him,	I said that I
worked the	ere during the year	ear 1970 and I	saw him throughout
the year.	But my recolle	ction is that	I spoke to him about
myself in	the late part o	f 1970.	

- Q Were you married at that time?
- A Yes.
 - Q Are you married today?
- A No.
 - Q Are you divorced?
- A Yes.
 - Q When did the divorce take place?
- 13 A A year ago.
 - Q In late 1970 or early 1971 was Mr. Dinino the only person that you were borrowing money from?
 - A No.
 - Q How many people were you borrowing money from at that time?
 - A How many people was I borrowing from, or how many people did I owe? I wasn't borrowing from anybody. I owed the people.
 - Q Well, did you borrow from your relatives?
 - A Not at that -- no, not then. I borrowed from relatives, you talking about a specific period of time.
 - Q Between late 1970 --

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A Right.

Q [continuing] -- and '73 when the agent first came to your house.

A Yes.

Q You were borrowing money from people other than Mr. Dinino; is that right?

A That's a new question. Yes.

Q How many people were you borrowing money from?

A About three.

Q During that period of time, late 1970 and '73, approximately how much money did you owe out?

A At one time or for the whole three years?

I don't --

Q During that entire three-year period.

THE COURT: What is this, a sum total? You know, if you want a balance at a given point let's specify the point.

MR. PELUSO: I will withdraw the question.

THE COURT: All right.

MR. PELUSO: I will try to make it simpler.

Q What were your weekly payments between late 1970 and '73 to different people to whom you owed money?

MR. ABZUG: Objection.

THE COURT: Sustained.

1	103 cmsr Jackson - cross
2	Q How much were you earning at that time, sir?
3	MR. ABZUG: Objection. What time?
4	THE COURT: I'll tell you
5	MR. PELUSO: Between late
6	THE COURT: I assume that things may change,
7	and so either confine it to a reasonably short period of
8	time or establish that things didn't change. But if we
9	are talking about three years I will assume things changed.
10	MR. PELUSO: This I will do, Judge.
11	THE COURT: All right. What is your question?
12	Q I believe that you testified earlier that you
13	were earning approximately \$350 a week; is that right?
14	A In 1970.
15	Q Were you earning the same sum in 1971?
16	A In '71, yes.
17	Q And in 1972?
18	A No.
19	Q What were you earning in '72?
20	A Less. I became a dispatcher instead of a driver,
21	and my earnings went down. I earned approximately \$100
22	
23	Q Was this at or about the time that you got your
24	divorce from your wife?

No, I got my divorce from my wife a year ago.

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No. I would guess it was June or July. Maybe earlier than that. Q I'm sorry, Mr. Jackson, you say that sometime in SOUTHERN DISTIGLT COURT REPORTERS, U.S. COURTHOUSE

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July or August --

A I didn't say that. You asked me when the FBI agents came to my home, and I told you that I thought it was in June or July, or it might have been earlier than that. I'm not sure. It was in 1973, and it was sometime before July.

Did you mention to the agent that came to your home, Mr. Raleigh or Mr. Potkonjak, on that occasion when they first came to your home, did you mention Mr. DeVito's name to them?

A I didn't mention anything. They asked me questions and I gave them answers.

- Q And in response to their questions --
- A Yes.
- Q [continuing] -- did you mention Mr. DeVito's name?
- A You mean did I answer that I knew him?

 THE COURT: Now look, we're having confusion.

 What is your precise question?

MR. PELUSO: My precise question is:

- Q When they came to your home for the first time --
- A Yes.
- 0 [continuing] -- and asked you questions --
- A Yes.

tioned his name to you?

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1 Q [continuing] -- did you on that occasion in 2 response to their questions or voluntarily mention the name 3 Mr. DeVito to the agents? MR. ABZUG: Objection as to form, your Honor. THE COURT: Overruled. A I didn't mention his name. They mentioned his 7

name and I responded. Q You say that on the first occasion they men-

A Yes. My recollection was they asked me if I knew certain people, and he was amongst the people that they asked me about.

Q And as you were responding to these questions were the agents making notes?

A I think so. I think they had a yellow legal pad, I'm not sure, but I think so.

> MR. PELUSO: Judge, may I approach the bench? THE COURT: Yes.

[At the side bar:]

THE COURT: Do you have an application?

MR. PELUSO: Yes, your Honor. In view of the response to my question that sometime in June or July, I believe it was, that he was interviewed by the agents that he mentioned Mr. DeVito, I am looking through the material

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that was furnished me by the U. S. Attorney and I don't find any notes concerning that specific time.

Now I am making a request at this time that if there are such notes that the U. S. Attorney be directed to furnish them to me.

THE COURT: Are there any other notes?

MR. ABZUG: No, sir.

THE COURT: All right.

MR. PELUSO: May we have a stipulation on the record then that there are no such notes?

THE COURT: He said there weren't. All right, anything else?

MR. ABZUG: Your Honor, may I advise the witness in the presence of all parties that we have arranged another airplane flight for him? He seems to be somewhat concerned, and I know he is not going to be able to make his four o'clock flight.

THE COURT: Aren't you through with the cross? MR. PELUSO: Judge, one of the problems is that we got this late and it was very, very illegible.

THE COURT: All right. We will cover that, but you know --

MR. PELUSO: I'm trying to cover --

THE COURT: How much more do you have for him?

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MR. PELUSO: I really don't feel I have gotten into the meat.

THE COURT: What is there? You must have some idea what you are doing in cross. I haven't heard any cross that really brings out anything. We have just gone and spent time. Now, if there is any point you want to make on cross, why don't you make it and let's get on to the next witness.

MR. PELUSO: I just don't want to cross-examine in abstract, Judge. I want to lay a foundation for what I'm going to cross-examine on.

MR. WALLACH: Also for summation.

THE COURT: But you know we can't spend two days on every witness in this case for no good reason.

MR. PELUSO: I don't propose to.

I haven't heard much on cross that added anything to the case so far, but we have taken a lot of time. I expect you to get through your cross and we will go on to another witness this afternoon.

[In open court:]

THE COURT: All right, finish up the cross, please.

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BY MR. PELUSO:

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Q Mr. Jackson, who first introduced you to Mr.

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DeVito?

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A Mr. Dinino.

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Q Who first told you that Mr. DeVito was Mr.

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DiNino's partner?

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A Mr. Dinino.

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Q Do you have an infinite recollection, sir, of

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A Pretty good.

this introduction?

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And your recollection is that on one occasion Mr.

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Dinino introduced you to Mr. DeVito, and Mr. Dinino said,

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Mr. Devito is my partner?

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A Well, he didn't do it in -- in other words, it

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was done in my presence and other men in the taxi stand.

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He didn't come to me prevately and say it.

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O There is no doubt in your mind that Mr. Dinino told you that Mr. DeVito was his partner?

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A No.

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THE COURT: There is no doubt?

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THE WITNESS: There is no doubt.

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THE COURT: All right.

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Are you as certain about that testimony, sir, as you are about everything else you testified to here today?

1 110 asr Jackson - cross A Well, the only thing I am not certain about is 3 the exact dates. It goes back five years. But I am certain of the series of events that took place and the people that were involved. Q Do you remember testifying, sir, on October 19, 1973, before the Grand Jury? A I remember testifying in 1973, yes. MR. PELUSO: May I direct the Court's attention to the minutes of the Grand Jury dated October --THE COURT: You don't have to direct my attention. 12 MR. PELUSO: I want the U. S. Attorney to know from where I am asking my question. MR. ABZUG: Objection, your Honor. THE COURT: Look, you have got a question to ask.

You can ask it. Do you have a question to ask based on Grand Jury testimony of October 1973 or don't you?

MR. PELUSO: Yes, I do, Judge.

THE COURT: All right, let's ask it.

MR. PELUSO: I'm making reference to Page 11,

Judge.

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THE COURT: All right. Page 11.

BY MR. PELUSO:

Q Were you asked on that occasion by Mr. Padgett, the Assistant U. S. Attorney:

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"Q Who told you that Vinnie was John Dinino's partner?

"A Vinnie."

Do you remember making that answer to that question?

A I don't remember making it, but I am sure if it's there that's what I must have said.

Q Was that answer incorrect?

A To my recollection right now Mr. Dinino introduced Mr. DeVito to me and other people as his partner. That's my recollection now. What I said in '73 would be wrong according to my recollection now.

Q You were under oath in '73, weren't you, before the Grand Jury; is that right?

The same as now, yes.

Q And on that occasion in response to that question you did not say that it was Mr. Dinino --

THE COURT: Look, we don't have to have argument. You have read it, he has given you his side of it, and the jury has the whole thing. We don't have to argue the point.

Do you have anything else on cross?

Let me ask you this, sir: Is your memory better today than it was back in October of 1973?

MR. ABZUG: Objection.

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THE COURT: Overruled.

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I would say my memory is not better regarding this particular set of events, no.

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Q By the way, sir, you said there came a time when in addition to borrowing money from Mr. Dinino you were calling in bets; is that right?

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That's true.

his testimony.

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Is that right, sir?

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I said, that's true.

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Q And I believe you said that it was Mr. Dinino who told you that he had a telephone number that you could

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use to call in bets; is that right, sir?

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MR. ABZUG: Objection. It is a misstatement of

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THE COURT: Yes, just ask the question directly. Don't ask what he said this morning or this afternoon. Just ask the question directly.

O Did Mr. Dinino tell you directly that in addition to Shylocking he was also in bookmaking?

He didn't say it that way, no.

Q Did you ever tell this to the agents that you spoke to?

Did I ever tell what? A

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Q [continuing] -- through Mr. Dinino?

A I think I testified to that, but I will say it again. Louis Materasso was dispatcher in Al's Taxi at the time, and he told me that if I wanted to gamble on horses, or betting on ball games, that Mr. Dinino now was booking and he had a number that he could get for me to gamble through.

Q Louis Materasso told you this?

A He told me this. He was the one that told me originally about it, yes.

Q No doubt that it was Louis Materasso that told you that?

A No doubt about it, did you say? I recall it pretty vividly, yes.

Q I am reading from Page 6 of the Grand Jury minutes of October 19, 1973. Were you asked this question:

"Q Did there come a time during your relationship when this motivation changed to pay him, your motivation was originally because he was a source of credit?

"A Yes, it did.

"O When was that?

"A After borrowing money from Dinino for about less than a year and knowing that I was a gambler, he told me that in addition to Shylocking he was in the

Jackson -cross

bookmaking business and that if I wanted to he would give

me a telephone number to call and gamble through, and since

I had exhausted all other means of credit I took the

number in addition to borrowing and owing him money, I

also gambled through him in an office that he represented."

A That's true.

O Do you remember testifying to that before the Grand Jury?

A That's true. I must have. And I testify to it now, too.

Q Well, was it Mr. --

THE COURT: Yes.

MR. PELUSO: I object to that remark, Judge.

A Mr. Materasso was the one -- I apologize -- Mr. Materasso was the one who told me about Mr. Dinino's bookmaking activities, and I went to him through Materasso and said I'd like to use your number, and he gave me the number. It's possible that I went to him and asked can I place bets with you, or he said, here's the number, you can -- I don't remember how the exact -- who said what to who in that squence.

October 19, 1973, were you specific as to who told you

what?

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MR. ABZUG: Objection.

THE COURT: Sustained. You don't have to argue with the witness what his Grand Jury testimony is. The jury has heard it, they have heard his testimony here. Let's go on to the next point.

Q Did you on that occasion tell the Grand Jury that it was Mr. Matarasso --

THE COURT: He has testified. The jury has heard the testimony. You have read it. You don't have to argue with him about what it means. That's just what I said. Let's go on to the next point.

- Q By the way, in any of your conversations with the agents did you give a description of Mr. DeVito?
 - No. I'm sure I didn't.
- Q Did you in any of your conversations with the agents give them Mr. DeVito's last name?
 - No. A
- Did you on any of your conversations with the agents give them the make or model or license plate number of any car that Mr. DeVito might have been driving when he came up to your place at Al's?

MR. ABZUG: Objection, your Honor. It is totally collateral.

MR. ABZUG: Sorry, your Honor. I will just get

I don't understand this.

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MR. ABZUG: All right, your Honor. I have

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no further questions.

MR. BLOUSTEIN: Your Honor, based upon the redirect of Mr. Abzug it raises some question in my mind that I would like to --

THE COURT: What redirect did he -- I don't think he was permitted to answer a single question.

MR. BLOUSTEIN: He asked a question, did he borrow money from Mr. DeVito, and he said yes.

THE COURT: I struck that.

MR. BLOUSTEIN: Well, I think the jury may be confused now as to what monies were borrowed, whether the testimony given originally was only from Dinino or whether that was Dinino and DeVito. I don't know myself, your Honor. I will abide by your Honor's ruling.

THE COURT: Does Mr. DeVito's counsel want to go into that?

MR. PELUSO: Judge, I rest at this point.

THE COURT: All right. Yes, I think so. I am going to say to the jury unless there is a correction that should be made, and I am sure counsel will bring it to my attention, that we have several other witnesses in this case. I have stricken any reference to borrowings from DeVito and what that means is when you are considering the evidence at the end of the case you will not consider

anything about that, it is stricken from the record and so that we can make some progress on this trial.

You are dismissed, Mr. Jackson. Thank you.

[Witness excused.]

THE COURT: All right, next witness.

MR. ABZUG: The Government calls Sidney Shalkin.

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SIDNEY SHALKIN, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

- O Mr. Shalkin, where do you curre..tly reside, sir?
- A 64 Morris Street, Yonkers, New York.

MR. BLOUSTEIN: I didn't hear that.

THE COURT: Just repeat that.

THE WITNESS: 64 Morris Street, Yonkers, New

York.

- O Are you currently employed, sir?
- A I am.
 - Q Where, sir?
 - A 211th Street and Broadway.
- 24 Q What capacity?
- 25 A Dispatcher.

1	121 cmsr	Shalkin - direct
2	Q	Directing your attention to 1971, how were you
3	employed t	then, sir, if at all?
4	A	Al's Car Service.
5	Q	Where is that located, sir?
6	A	5999 Broadway.
7	Q	How long did you work at Al's Car Service?
8	A	Oh, I guess about four years.
9	Ü	From what period of time, sir?
10	A	1970 to about 1974.
11	Q	Directing your attention again to 1971, what
12	were your	hours then, sir?
13	A	Well, I never worked a full day. I used to
14	work le	eave say, three, four o'clock in the afternoon.
15	The usual	hours is twelve hours.
16	Q	Why did you only work until three o'clock, sir?
17	A	Due to my health.
18	Q	Mr. Shalkin, do you know a man by the name of
19	John Dinino?	
20	A	Yes, I do.
21	0	Is he in the courtroom today?
22	A	Yes.
23	Q	Would you identify him for the jury, please?
24	A	The gentleman sitting right over here [indicating.

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MR. ABZUG: Let the record reflect the witness

,	122 cmsr	Shalkin - direct
1		ied Mr. Dinino. You may sit down.
2		
3		THE COURT: Yes.
4		When did you meet Mr. Dinino?
5	A	Oh, I don't know. It was about 1972, I believe.
6	Q	Was that when you first met Mr. Dinino?
7	A	That's about it, yes.
8	Q	Did there come a time when you borrowed money
9	from Mr. Di	inino?
10	A	Yes.
11	Q	When was that, sir?
12	A	Well, I guess about a year and a half or so
13	after I was	s employed there.
14	ú	Where did you borrow the money from him, sir?
15	A	Well, around the area there.
16	Q	What area, sir?
17	A	Around where the office was, 5999 Broadway.
18	Q	Approximately what time of day was it?
19	A	I didn't hear you.
20	Q	What time of day did you borrow the money, sir?
21	A	I believe in the evening.
22	Q	Who was there when you borrowed the money?
23	A	Oh, I don't recall. I couldn't tell you who was
24	around.	
25	Q	Did you have a conversation with Mr. Dinino?

- A In the same area that I was employed in.
 - Q What time of day?

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- A I believe in the evening.
- 0 What happened after you made the six or seven payments?
 - A Well, I was out of work for a while. I wasn't

1	124 cmsr	Shalkin - direct
2	able to	
3	Q	Why were you out of work, sir?
4	A	Well, I was ill. I have heart disease and
5	diabetes.	
6	Q	Where were you during the period that you were
7	ill, sir?	
8	A	I didn't hear that. I'm sorry.
9	Q	Where were you during the period that you were
10	ill?	
11	A	I was at home.
12	Q	How long were you ill?
13	A	I guess about two months or so, approximately.
14	Q	What did you do after the two months were over?
15	A	I went back to work.
13	Q	Where, sir?
17	A	In the same company, car service.
18	Q	Did you have a conversation with Mr. Dinino
19	when you o	came back?
20	A	Yes.
21	0	Where did the conversation occur?
22	A	Well, in the same area as the car service. I
23	don't know	w, it might have been outside, it might have been
24	inside.	I don't particularly remember.
25	Q	Do you recall who was there besides yourself and

Mr. Dinino? 2

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A No, I don't.

Q What did you say to Mr. Dinino and what did he say to you?

A Well, I told him the circumstances, I believe, and there was a remark made that I might get a punch in the nose.

Q What did you do after that, sir?

A Well, I resumed payments, and I believe I got a renewal after that.

Q How many renewals -- when you speak of a renewal, could you explain to the jury what a renewal is?

A Well, the same as you would anywhere else. You get so much money, and it's added on and they bring it up to the original amount.

Q How many of these renegotiated loans did you make, sir?

Maybe two or three. A

Who were they from sir? 0

Mr. Dinino. A

Did you make payments on these loans? 0

I sure did. A

To whom did you make the payments? Q

Mr. Dinino. A

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inino?

127 cmsr Shalkin - direct

THE WITNESS: Yes, sir.

THE COURT: The man in the green suit with the greenish tie?

THE WITNESS: Yes, sir.

THE COURT: All right. Motion denied.

BY MR. ABZUG:

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Q Did you pay this man Vincent before or after John Dinino threatened to punch you in the nose?

A Oh, I don't recall. I say my memory is bad.

I couldn't make a definite answer on that, sir.

Q Well, did you pay the man known to you as Vincent on the first loan or the following series of renogiated loans?

A I think it was on the following.

How long did you owe money to Mr. Dinino?

A Oh, I don't know. Approximately a year or so.

O How long did you make payments to him, sir?

A Well, on and off during the course of the year that I was ill, and so forth, about a year.

O How much were these renegotiated loans for, sir?

A Oh, maybe \$60.

Q Is that how much you would receive from Mr.
Dinino?

A Yes, sir.

	128 cmsr	Shalkin - direct ., 127
1		nat would that bring the balance up to, sir?
2		would bring it up to the original amount.
3		
4		nich was what, sir?
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6	O He	ow much were your payments during this period,
7	sir?	
8		5.
9	Q A	pproximately during this period, and speaking
10	now of 1971,	what were your wages, sir?
11	A 0	h, I earned on the average maybe 120, \$80 a week.
12	, т	HE COURT: I didn't get that. What were your
13	wages?	
14	r	THE WITNESS: Approximately 120.
15	1	THE COURT: All right, go ahead.
16	0 1	oid you finish paying off Mr. Dinino?
17	A 3	es, sir.
18	0 1	When was your last payment to Mr. Dinino?
19	A (Oh, I don't know. Like say, it was during the
20	course of t	he year's time that I was ill, and so forth,
21	and I paid	it off and I started to work again.
22	0	When did you pay off the last renegotiated loan,
23	sir?	
24	A	Ch, I don't recall the date, sir.
25	g Q	Do you recall talking to the FBI, Mr. Shalkin?

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A Yes, sir.

MR. ABZUG: May I have this marked as a Government exhibit.

> [Government Exhibit 1 marked for identification.]

BY MR. ABZUG:

Now showing you what has been marked for identification only as Government's Exhibit 1, I direct your attention to the second paragraph on this document, sir.

Does that refresh your recollection as to when the last payment to Mr. Dinino was made [handing]?

MR. WALLACH: Objection, your Honor.

THE COURT: Overruled.

Q I also invite your attention, sir, to the date at the bottom of the document.

Do you recall now, sir, when you made your last payment to John Dinino?

Between 1973 and '74, I guess.

After looking at what has been marked into evidence as Government's Exhibit No. 1 --

THE COURT: It isn't in evidence, it is marked for identification.

MR. ABZUG: I am sorry. I misspoke myzelf, your Honor.

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1	130 cmsr	Shalkin - cross
2		I have no further questions of this witness,
3	your Honor	
4		THE COURT: All right.
5		Mr. Bloustein.
6	CROSS-EXAM	INATION
7	BY MR. BLO	USTEIN:
8	Q	Mr. Shalkin, when for the first time did you tel:
9	anybody ab	out the remark, "punch in the nose?"
10	A	When did I tell them?
· 11	Q	Yes.
12		THE COURT: Hold it one minute. All right, go
13	ahead, Mr.	Bloustein.
14		MR. BLOUSTEIN: Excuse me, your Honor, how late
15	are we wor	king?
16		THE COURT: We are working until about 4:30,
17	and I hope	we can finish this witness so he can go home.
18	Q	Do you understand my question, Mr. Shalkin?
19	When for t	he first time did you tell amybody about the
20	remark abo	u t the punch in the nose?
21	A	Well, I believe it was before the Grand Jury.
22	Q	That was the first time; is that correct?
23	A	That's right.
24	Q	Now you testified in the Grand Jury on October
INCOME WHEN PROPERTY OF	The second section of the second seco	

29, 1973. Foes that date refresh your recollection?

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It does, yes.

Before that you were interviewed by some FBI people, were you not?

Yes, sir. A

And that interview took place on September 11, 1973; is that correct? Don't shake your head, the Reporter can't --

I believe so, yes.

Now, did you tell the FBI people anything about the threat to punch you in the nose?

Not at that period of time, no.

No. That wasn't important to y a at that time? MR. ABZUG: Objection.

THE COURT: Let's rate argue with the witness, please.

MR. BLOUSTEIN: I'm not arguing, Judge.

There is nothing that prompted you to tell them about the remark punch in the nose in September --

THE COURT: I don't know what that would mean, nothing that would prompt him.

Did you give a statement to the FBI about this incident that you testified to today?

Did I -- before the Grand Jury, yes.

No, prior to going to the Grand Jury.

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1	132 cmsr Shalkin - cross
2	A No, sir
3	Q You never told the FBI about this?
4	A No, sir. Not to my recollection.
5	THE COURT: Please sit down, Mr. Abzug.
6	MR. BLOUSTEIM: Now I offer into evidence a
7	document that was handed to me by Mr. Abzug dated 9/11/73
8	which was offered, I believe, for identification by the
9	Government as Government Exhibit 1 for identification.
10	THE COURT: Let's have that marked. Would you
11	mark this as a defendants' exhibit for identification.
12	Defendants' Exhibit A for identification.
13	[Defendants' Exhibit A marked for
14	identification.]
15	THE COURT: Is there any objection to Defendants
16	Exhibit A?
17	MR. ABZUG: Is it being offered into evidence,
18	your Honor?
19	THE COURT: Yes, it is.
20	MR. ABZUG: Yes, your Honor, we do have an
21	objection.
22	THE COURT: May I see it? I will receive it.

[Defendants' Exhibit A received in evidence.]

Defendants' Exhibit A is received.

		* * * * * *
1	136 cmsr	Shalkin - cross
2	you in the	nose?
3	A	I guess it could happen.
4	Q	And they never did punch you in the nose?
5	A	No.
6	Q	It is just a figure of speech.
7	A	It could be.
8	O	And nobody punched you in the nose when you
9	took longe	r to pay this money?
10	A	No.
11	Q	Mr. Dinino never hurt you, did he?
12	A	No, he never did.
13	0	Who was your boss at Al's? Who was your superior
14	there?	
15	A	Mr. Joseph Codemo.
16	Q	Joseph who?
17	A	Codemo.
18	Q Q	Isn't it a fact that Tommy Brando was another
19	one of you	r superiors?
20) A	Yes.
2	1	THE COURT: Tom who?
2	2	MR. BLOUSTEIN: Brando. B-r-a-n-d-o.
2	3	THE WITNESS: Yes, sir.
2	4 Q	Didn't Mr. Brando have a transaction with Mr.

Dinino whereby he bought a car from Mr. Dinino?

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they came to my home.

THE COURT: All right.

Q Did this conversation take place in Yonkers, New York?

A Yes, sir, at my home.

Q Did you discuss this case on any other occasion with any other agents?

A No, sir.

Q Did you discres this case on any other occasion with any other Assistant U. S. Attorney or members of the United States Government?

A Only when I was brought down before the Grand
Jury.

So that --

A On the subpoena.

Q So that you discussed this case on one occasion on September 5th, 1973, and once before the Grand Jury; is that right?

A That's right.

Q When you discussed the case on September 5th, 1973, in your home were the agents asking questions and you responding to their questions?

A Yes. The agents --

O And they were making notes?

1	139 cmsr	Shalkin - cross 138
2	A	I believe he was.
3	0	On September 5th, 1973, on this occasion when
4	you discuss	ed this case with the agents did you mention
5	to them, or	did they ask you about Mr. Vincent DeVito?
6	A	No, I don't believe they did. Anyway, I don't
7	remember.	
8	0	And you had no discussions other than the dis-
9	cussion on	September 5th, 1973 and your testimony before
10	the Grand J	ury on October 29th, 1973; is that right?
11	A	Yes.
12		MR. ABZUG: About what, your Honor?
13		MR. PELUSO: About this case.
14		THE COURT: The answer is no. All right, go
15	ahead.	
16	Q	And did you on October 29th, 1973, testify
17	about Mr. I	DeVito?
18	A	Was that the day
19	Q	In connection with this case.
20	A	Was that the day before the Grand Jury?
21	Q	The day in the Grand Jury.
22	A	That's the only time.
23	Q	That was the first time that you mentioned

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A That's right.

anything about Mr. DeVito; is that right?

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Q Can you tell us which were the hours during the day that you worked there?

A Well, approximately from six in the morning till three, four in the afternoon.

- Were you working at Al's --
- Sometimes until six. A
- I'm sorry.
- I said, sometimes until six.
- Were you working at the same time that Mr. Jackson was working at Al's Taxicab Service?
 - Yes, I was.
 - Did you see Mr. DeVito --MR. PELUSO: Withdrawn.
- Did you give money to Mr. DeVito on more than one occasion?
 - No, I never did.
 - During that period of time?
 - No. A
 - Did you see him on at least fifty occasions --
 - No. A
 - [continuing] -- come into Al's Taxicab place? 0
 - No, I wouldn't say that. A

MR. PELUSO: I have no further questions.

THE COURT: Redirect.

mp3

prohibited by 894 and actual fear is not an element of the defense.

Eighth Circuit case. I don't know what is meant by that, but usually you sort of disagree with it. It says that to be convicted the defendant must have intended to make a threat to cause harm and so forth, and convictions have been sustained under this statute even where the person denied at the trial that he was put in fear.

The approach chosen by the trial judge to define the word "threat" gives the statute a proper construction since it focuses the jury's attention on the evil being attacked, the defendant's conduct, and then it goes on to say "Acts or statements constitute threat if they instill fear in the person direct or calculated to do so in light of the surrounding circumstances."

MR. AB ZUG: That is the portion I submit is relevant.

THE COURT: I think you are right. I think the actual fear, although it was not charged as a necessity by Judge McMahon, it still, I think, is every indication it is relevant.

I have just had a reaction from yesterday.

I am not going to permit you to lead a person into telling

mp4

the jury that he was made afraid when somebody was acting in a way that would not normally put someone under fear.

You know, there is a limit.

MR. ABZUG: Perhaps my questions were inartfully phrased.

you were trying to do this. I get your point. I will be guided by this, but I still -- I must say to you that the case so far has shaped up, and this is really sort of the background of my thinking, the case has shaped up thus far in a much less terroristic fashion than I would have started out thinking of with reference to extortion.

MR. ABZUG: Which is precisely why I think it is relevant that the witnesses explain what effect the act had on them.

axample, your Honor, if I was a creditor and you were a debtor -- and words have various meanings. My words to you may have one meaning or they may have another meaning.

It is relevant that the witness explain the context of the relationship to explain what the defendant intended that he meant when he said the words.

For example, if I were a creditor and you were a debtor and we had a long friendship for two years, and

we had a code word that whenever I said to you, "I am going to punch you in the mose unless you pay money," and what that meant was that I was going to take you out to dinner, and any person objectively viewing that relationship would think there is a threat there, but when the witness explained the relationship between himself and the creditor, he would be able to say that that is not what the defendant really meant.

And that he did not mean to say that that was an invitation to dinner. That is why I say that.

Jackson comes in and testifies that Dinino says, "I don't want to hear any more stories. I got to get paid," but then he composes the debt, the total debt, for \$100 a week payment, and then upon objection by Jackson, he agrees to accept \$10 a week -- where is the extortion?

I mean that I am seriously considering whether
I could possibly let any claim about Jackson go to the
jury. Jackson could come in and testify till the cows
come home that he was afraid, but Jackson was a pretty
musclely guy on the stand. The upshot of it all is that
Dinino caved in and was letting him pay off \$10 a week,
and that was never all paid. I suppose it was interrupted
by the investigation.

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MR. ABZUG: I would argue on a motion to dismiss, your Honor, but I would point out at this juncture that what I would argue to the jury is the defendants' continuous recitation that they had to check that with various officers, and that was designed to instill a doubt of fear in the victim's mind.

and you have to have a case. As far as I am concerned,
I will tell you right now that I do not think you have a
case on Jackson. To convict a guy for extortion you have
to prove beyond a reasonable doubt something besides the
kind of give and take among grown, rather rough men in
circumstances in which they found themselves.

This was not the lobby of Morgan Guarantee.

It was not intended to be. There may have been a crime or wrongdoing by engaging in this kind of conduct, but that is not under the law I am worried about. There may be a problem under State law. Maybe the State should not or does not permit people to loan under these terms and circumstances. I have no idea. But I am dealing with an extortion statute. I think in order to label somebody with an extortion conviction, it has to be a lot more than what was shown with Jackson.

I state that tentatively and I am not granting

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matter.

morion to dismiss. I will hear you out.

I think if you have a very thin case on its facts, I am going to be a little bit careful in allowing the witness to testify about fear. Now, I guess you have just the opposite reaction, and maybe you are right. If you have a case where there are no very serious threats which are made expressly, and the words used aren't very serious, you would think it is all the more important to you to put in the fear. I will consider all this. Let's not try topredict. Let's take it one step at a time and see what your proof is as you go along.

MR. WALLACH: Your Honor, may I bring something up? To expedite things, your Honor, there may be photographic identification in this case. I have a decision outside, and it just came down, I do not want to interrupt the trial, your Honor, but we may be compelled to ask for a hearing outside the presence of the jury, a hearing as to whether any photographic identification of the accused --

THE COURT: We will cover that. That is an easy

If you want to make an application for a hearing make it.

(The jury entered the courtroom.)

THE COURT: Alternate Simmons was Alternate No.

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PH 7 P CASSES, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ABZUG:

- Q Mr. Cassese, is it Casses or Cassese?
- A Cassese.
 - Q Where do you currently reside, sir?
 - A 6555 Broadway in the Bronx.
 - Q How old are you, sir?
 - A 62.
 - Q Mr. Cassesa, directing your attention to the years 1970 to 1973, were you employed, sir?
 - A Yes. I was working part-time.
 - Q Where, sir?
 - A Which year?
 - Well, in 1970 where were you employed, sir?
 - A I was employed at Mosholu Avenue.
 - Q By whom, sir?
 - A Carter.
 - Q Directing your attention to the year 1971, were you employed then, sir?
 - A I believe I was with the same people.
 - Q How about 1972, sir, were you employed then?

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- I was, yes. A
- By the same business?
- Right.
- How about 1973, sir?
- I got sick. I suffered a mental breakdown.
- Do you know a man by the name of John Dinino, 0 sir?
 - I do. A
 - Is Mr. Dinino in the courtroom today, sir? 0
 - He is.
 - Would you identify him to the jury?
 - Well, the gentleran in the brown jacket.

MR. ABZUG: Let the record reflect that the witness has identified the defendant, your Honor.

THE COURT: The defendant Dinino.

MR. PELUSO: Judge, I object to that. With all due respect -- he said that it was the gentleman in the brown jacket.

THE COURT: Well, I do not think there is -what is the problem?

MR. ABZUG: Perhaps we should clarify that.

MR. PELUSO: The problem is that the gentleman in the brown jacket is not Mr. Dinino.

THE COURT: Apparently we have a olor problem,

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Cassese-direct

MR. ABZUG: This, your Honor (handing).

THE COURT: Mr. Cassese, you said that you borrowed from Mr. Dinino over the period of about a year.

Is that something you are sure of?

THE WITNESS: Well, I'm not too sure about the time because in 1972, the latter part of '72, I was under the care of a psychiatrist.

I had a nervous breakdown. I was under heavy medication.

THE COURT: I will allow you to use this to try to refresh recollection.

MR. ABZUG: Thank you, your Honor.

fHE COURT: You do not have to have it marked for identification. Just use it.

BY MR. ABZUG:

Q Mr. Cassese, showing you a portion from your grand jury testimony on page 8, grand jury testimony of March 7, 1975, and directing your attention to lines 13 through 16, does this refresh your recollection, sir, as to how long you owed money to Mr. Dinino?

- A A period of three years?
- Q Is that your testimony, sir?
- A I don't remember that.
- Q It does not refresh your recollection, sir?

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not in evidence to the jury.

THE COURT: What is the rule?

MR. BLAUSTEIN: You cannot read to the jury something not in evidence.

MR. WALLACH: Your Honor, may we approach the bench?

(At the side bar.)

MR. WALLACH: Your Honor, aside from the new rules of evidence, the question of confrontation over here -this witness here is going to be examined now as to what he said to the grand jury.

We cannot cross-examine him because he does not recollect. In the other cases --

THE COURT: What is the reference to the new rules?

MR. WALLACH: Pure hearsay, your Honor, and no probity. What he said at the ex parte proceeding before the grand jury --

THE COURT: Can't you impeach him?

MR. ABZUG: He testified, your Honor, and it is prior inconsistent testimony under the Federal Rules.

THE COURT: Can you impeach your own witness?

MR. ABZUG: Of course you can.

MR. WALLACH: He is not a hostile witness.

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MR. ABZUG: The defense has been doing this all through the trial, your Honor.

THE COURT: Get some authority and tell ma about it.

MR. WALLACH: Your Honor, there is a case in this Circuit, U.S. v. DeSisto --

MR. ABZUG: Rule 607 of the Federal Rules of Evidence, your Honor, says that you can impeach your own witness.

DeSisto is a case referring to unsworn testimony, your Honor.

MR. WALLACH: A case involving the sworn testimony, and it favored the government.

It came as a surprise to the go.ernment.
This is no surprise.

THE COURT: Is this offered solely for impeachment or is it offered for its substantive weight or what?

MR. ABZUG: Offered for its substantive weight, your Honor, and under DeDisto we can do that.

THE COURT: Can you just wait a minute.

I cannot get one person to finish before the other one gets so excited and starts up.

What is the government's theory?

Cassese-direct

MR. ABZUG: The government's theory is that the government puts on the witness, and under the new Federal Rules we do not have to vouch for its credibility. The witness testified he received loans from John Dinino for one year. In the grand jury and under grown testimony he said that he borrowed from John Dinino for three years. I am offering this as substantive evidence.

THE COURT: What is the authority?

MR. ABZUG: Under the De Sisto case, your Honor, and sworn testimony offered to impeach the witness, and we are entitled to argue to the jury that the statement of sworn testimony before the grand jury is the truth stated, and that they should disregard his testimony at trial.

That's the De Sisto case.

THE COURT: You are offering this to impeach his test mony?

MR. ABZUG: Absolutely.

THE COURT: Solely?

MR. ABZUG: And for substantive purposes.

THE COURT: I do not have the De Sisto case sitting here, nor did I memorize it.

Are you telling me that the De Sisto case permits
you prior grand jury testimony of your own witness for its
substantive effect?

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MR. ABZUG: Yes. The whole thing.

THE COURT: What do you say?

MR. WALLACH: I remember the case. I think that was a retrial. One of three leading witnesses in a hijacking case denied that the defendant was present during the hijacking. The U.S. Attorney then took his grand jury testimony and got it in evidence. It was used in evidence because it was sworn and it was grand jury, but the witness in the De Sisto case -- this man says he does not remember, and they want to bring in the grand jury testimony. How can we cross-examine this man as to what he said before the grand jury? He couldn't remember.

THE COURT: He could not in the De Sisto case.

MR. WALLACH: In the De Sisto case he changed his testimony.

THE COURT: But you concede in the De Sisto case he permitted the grand jury testimony to be introduced for the substantive effect.

MR. WALLACH: No question but it, because the witness changed his testimony at the retrial.

MR. ABZUG: May I say something, your Honor?

MR. WALLACH: Excuse me a moment. May I

continue, Judge?

It is a question here, and not withstanding

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Cassese-direct

the new rules of confrontation of evidence, but how can we cross-examine this man? We cannot cross-examine. They can cross-examine the witness all they want to.

THE COURT: I have to read the De Sisto case.

We have trial time going on and on. You can certainly

use it for impeachment.

MR. ABZUG: May I make the suggestion, your Honor, and clearly we can use it for impeachment, and we will take the testimony now and you can take a look at the De Sisto case and render an appropriate instruction after your Honor has read the De Sisto case.

THE COURT: The main thing is that if you go into the thing step by step with him, this general characterization as to the time period, it will probably wash out anyway.

MR. ABZUG: One final point, your Honor.

I have been unable to meet with this witness before trial.

I met with him once in grand jury. I met with him for ten minutes yesterday.

His testimony, the nature of his testimony today is a surprise to me.

THE COURT: Okav.

(In open court..)

2 BY MR. ABZUG:

Mr. Cassese, do you recall giving the following answers to the following questions:

"Q In approximately what periods did these loans occur over a period of approximately three years between 1970 and 1973?"

Your answer, "I would say about three years."

Do you recall giving that testimony to the

grand jury, Mr.Cassese?

A No, I don't.

MR. ABZUG: Your Honor, would you deem that admitted into evidence?

MR. WALLACH: I object. These remarks are not necessary, Judge.

THE COURT: For some reason, ladies and gentlemen, we are all tied up on some questions of evidence here.

I am going to ask you to go on and try to develop the testimony in more detail. Let's not pause forever on this blanket question and how long he said it was before the grand jury or hear that he overall made the transactions.

Get to the details, and see if it solves itself.

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MR. ABZUG: Yes, your Honor.

BY MR. ABZUG:

Approximately how many loans during this period, Mr. Cassese, did you take from Mr.Dinino?

A I really don't remember, sir.

(Government's Exhibit 7 marked for

iden__[ication.)

BY MR. ABZUG:

o Mr. Cassesa, showing you what has been marked for identification only as Government's Exhibit 7, and directing your attention to the third paragraph down, I would like you to read that paragraph and tell the Court and jury whether that refreshes your recollection as to how many loans you received from Dinino from 1970 to 1973.

- A I don't remember making these statements, sir.
- O Does that refresh your recollection, sir?
- A No, sir.

THE COURT: Let's see what memory he does have. A lot of times people don't remember the entire time periods or totals of transactions, but take it step by step and do the best we can.

You do remember knowing Mr. Dinino, right?
THE WITNESS: Yes, Mr. Dinino.

THE COURT: All right.

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1	mp73 Cassese-direct
2	Q How many loans did you take from Mr. Dinino,
3	sir?
4	THE COURT: Do not start that route again.
5	Just try to take it step by step, and see in his words
6	what he remembers about, if anything, dealings with Mr.
7	Dinino.
8	Q Did you have a conversation with Mr. Dinino when
9	you received these loans, sir?
10	A I think I did, yes.
11	THE COURT: Please. How do you remember it,
12	Mr. Cassese? You did make some loans from Dinino, right?
13	THE WITNESS: I made one loan. One loan I can
14	say I made.
15	THE COURT: You just describe what happened.
16	How did it come about, what is your memory as best you can
17	recall?
18	THE WITNESS: That goes so far back and I have
19	been under medication for over three years. My memory is
20	really in bad shape.
21	It never was in good shape before these three
22	years. I was under medication and for some reason or

THE COURT: What recollection do you have?

THE WITNESS: I know Mr. Dinino. He helps me

another, I have very little recollection.

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mp74

Cassese-direct

out one time. I naeded some money to pay a few things that were overdue.

I tried to get a loan from a bank. I was turned down. Somebody mentioned that he had a friend whom I might be able to borrow from. I think that's the way it happened.

THE COURT: I'm sorry, Mr. Abzug. Go ahead.

MR. ABZUG: Thank you, your Honor.

Q Approximately how much was this loan, sir?

A It might have been close to \$500. I can't be exact.

O Approximately \$500, then. What were the rates that you had to pay back, sir?

A Wall, the understanding, I think, and I'm not too sure, that I would pay him back as I accumulated some money, and as I was able to work. When I finally paid him off that I could sort of give him something for his being so generous.

Interest on the money?

A I could not say whether it was interest. If

I borrow money from somebody, I pay them back what I borrowed

and give them an extra \$50 as a sign of appreciation. I

don't know if you can term that as an interest payment.

Q We will let the jury make that determination.

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Cassese-direct

MR. WALLACH: I object to these remarks.

THE COURT: Yes. Mr. Abzug, get to the point.

Who did you make the payments to, sir?

A The person that gave me the money.

O Mr. Dinino?

A Yes, sir.

O Did you give payments to anyone else, sir, on Mr. Dinino's loans?

A I can't remember. All I remember is Mr.

Dinino. He is the man that I approached.

(Government's Exhibit 8 marked for identification.)

MR. WALLACH: I renew my objection, your Honor, to the matter that --

THE COURT: We just had something marked for identification.

Do you object to that?

MR. WALLACH: I do not object to that.

Q Showing you what has been marked for identification only as Government's Exhibit 8, and directing your
attention to page 8 of your grand jury testimony, lines 7
to 12, does that refresh your recollection as to whether you
made repayments on the loan that you received from John
Dinino to any other individual?

Cassese-direct

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of the other side to cross-examine the witnesses.

Why can't we read the case?

MR. WALLACH: Your Honor, this involves the

De Sisto case. We are off on another case. We have to have

the right to cross-examine this witness.

THE COURT: This is the point you make.

The De Sisto case, and these rules that

embody that, speak about the witness being subject to crossexamination. We cannot cross-examine this witness because
he does not remember anything. We cannot cross-examine
what he said before the grand jury because we were not
there.

THE COURT: Let's go on with another witness.

Read this case that you yourself brought up and see what it is. We will try to get it out and we will go ahead with another witness.

MR. ABZUG: I believe, your Honor, that according to counsel's theory, it would be impossible to impeach a witness that failed to remember.

THE COURT: The impeachment does not do you much good because here is a witness that says he does not remember, and then you impeach him. It is highly misleading to the jury.

You have to have testimony from him.

MR. ABZUG: Not at this juncture, but I am entitled to first of all cross-examine or introduce a sworn statement of what he says he does not remember for substantive proof.

a basis. That could be a very important count.

MR. ABZUG: You are right. I want to make my position clear.

as this witness is concerned may depend on your ability to use that testimony. It is very important. We will go and I will try to look at that case.

Get another witness.

(Witness temporarily excused.)

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About \$200 a week.

1	mp80	Hershkowitz-direct
2		THE COURT: Where did you say you worked?
3		THE WITNESS: I worked for Al's Taxi in 1969.
ļ		THE COURT: All right. Go ahead.
5	Ú	Do you know a man by the name of John Dinino,
6	Mr. Hershko	witz?
7	A	Yes.
8	Ω	Is he in the courtroom today?
9	Α .	Yes.
10	Q	Would you identify him to the jury?
11	A	Yes. (Indicating.)
12		MR. ABZUG: Let the record reflect that the
13	witness ha	s identified the defendant Dinino, your Honor.
14	Q	When did you first meet the defendant, Mr.
15	Hershkowit	z?
16	A	I met John towards the end of 1965.
17	Q	Where were you employed, sir?
18	A	I was employed at Knolls Limousine Service.
19	Q	Did there come a time, sir, when you borrowed
20	money from	m Mr. Dinino?
21	Λ	Yes.
22	Ü	Approximately what time, sir?
23	A	Between 4 and 5 o'clock in the afternoon.
24	Q	What year, sir?
25	A	Towards the end of 1965.

1	mp81	Hershkowitz-direct
2	Q	Where were you employed at that time?
3	A	Knoll's Limousine Service.
4	Q	Where is that located, sir?
5	A	On Mosholu Avenue in the Bronx and Riverdale.
6	Q	What kind of a business is Knoll's Limousine?
7	A	They have a transportation service. They take
8	people down	town and downtown back to Riverdale.
9	Q	Could you describe to the jury the conversation
10	that you ha	d with Mr.Dinino?
11	A	Yes. I was introduced to him, and I told him I
12	needed \$100).
13		He said, "Fine. You will have to pay me back
14	\$15 a week	for eight weeks."
15	O	Where did this conversation occur, sir?
16	A	In front of Knoll's office.
17	0	Following this conversation did you see Mr.
18	Dinino aga	in?
19	λ	Yes.
20	Q	Where did you see him again?
21	Λ	In front of Knoll's office.
22	Q	When did you see him again?
23	A .	Between 4 and 5 o'clock. On Fridays.
24	Q	I am sorry?
25	A	Between 4 and 5 o'clock on Fridays.

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	mp83	Hershkowitz-direct
2	A	Yes. In 1968 I took two loans under the same
3	conditions,	and paid him back the same way.
4	Ü	How much were these loans, sir?
5	A	\$100 each.
6	Q	Did you miss any payments?
7	A	No.
8	Q	Following the repayment of these loans, sir,
9	did there c	ome a time when you borrowed again from John
10	Dinino?	
11	A	Yes.
12	Ó	When, sir?
13	A	In 1969 when I was working for Al's Taxi.
14	Q	What part of 1969, sir?
15	A	It was towards the third-quarter of the year.
16	Q	Where did you meet Mr. Dinino then?
17	A	I met him in the luncheonette right next to Al's
18	Taxi.	
19	ll Q	Who was there, sir?
20	λ	I believe Lou Materozzo was there.
21	0	Did you have a conversation with Mr.Dinino?
22	. A	Yes.
23	Q	What did you say to him and what did he say to
24	you?	
25	A	I told him I needed \$500. He said, "Fine.

	227
1	mp84 Hershkowitz-direct
2	You will have to pay me back \$60 a week for 10 weeks."
3	Q Prior to this conversation in 1969 did you ever
4	see Mr. Dinino at Al's Taxi?
5	A Yes.
6	Q When, sir?
7	A Well, he used to come around on Wednesdays and
8	Fridays between 4 and 5 o'clock.
9	Q What did you observe when he would come around,
10	if anything, sir?
11	A He was just talking to about three of the boys
12	chere that I knew.
13	Q Who were these three men, sir?
14	A Lou, Billy Cassese
15	Q Following this fifth loan in 1969, were you
16	able to make payments?
17	A Yes. I made five payments in a row.
18	Q To whom did you make these payments, sir?
19	A To John.
20	O Did you make them to anyone else, sir?
21	A Not at this particular point.
2	2 What happened after you made the five payments,
2	3 sir?
2	A Well, then I took a re-loan, and he gave me \$200
2	which brought the amount up to \$600 again.

Were you a salaried employee?

How much did you make?

Yes.

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About \$180 a week I was earning. A

While you were at Right Way did you see John Dinino?

I did see him, but it was up at Carter's on Mosholu Avenue in the Bronx, Riverdale.

- Q When did you see John Dinino?
- Between 4 and 5 o'clock on Fridays.
- For what purpose would you see Mr. Dinino?
- To pay him what I owed him. A
- How much were your payments at that time, sir?
- \$60 a week.
- How many times did you drive the 15 miles from Right Way to Carter's to pay Mr. Dinino his \$60, how many payments?
 - Well, there was five payments that I gave him.
 - Then what happened, sir.
- Then my wife fractured her ankle and she was out of work. I told him that I could not make any --
 - Excuss me. Who did you tell?
- I told John that I could not make the full payments at that time, and that I had to give him interest payments.
 - What did he respond?

(A)

He said, "Fine. It will cost you \$10 a week."

1	mp87	Hershkowitz-direct
2	Q	Where did you have this conversation with Mr.
3	Dinino?	
4	A	In front of Carter's Service.
5	Q	Who was present at this conversation?
6	A	Well, Lou Materozzo might have been there, but I
7	am not sure	
8	Q	Following your conversation with Mr.Dinino where
9	he told you	you had to start paying interest, did you make
10	any interes	t payments?
11	A	Yes. I paid about eight interest payments in a
12	row.	
13	Q	Where did you make these payments, sir?
14	A	In front of Carter's Limousine Service.
15	Q	Where were you working at this time, sir?
16	A	I was still working at Right Way at the time.
17	Q	To whom did you make the interest payments, sir?
18	A	To John.
19	Q	Did you make the payments to anyone alse, sir?
20	A	No, sir.
21	Q	How long were you able to keepup these weekly
22	interest pa	yments?
23	A	Well, until I got sick, which was at the beginning
24	of the summ	er in July of 1970.
25	Ó	What happened when you got sick?

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Hershkowitz-direct

A Well I had a complication set in from diabetes that I had. I went into an insulin coma and I had trouble with my spine, and a lot of arthritisin my spine.

I was unable to work for quite some time.

- Q How long were you unable to work, sir?
- A About three months.
- Ω During this time were you able to pay Mr.
 Dinino his weekly \$10?
 - A No, I wasn't able to give him anything.
 - Q What happened after your illness terminated, sir?
- A Well, I went up to Carter's after about two months to visit the boys up there, and John came in.

And he grabbed me by the arm in an angry tone of voice and he said to me, "Where is the money you owe me?"

- Q What did you do, sir?
- A I said, "Haven't I paid you enough?"

 He said, "No, you still owe me money, and you have to pay me."

I said, "I can't do anything right now because
I'm sick and I have to wait until I go back to work."

He finally calmed down and agreed to it.

- Q After that conversation did you begin to work, sir?
 - A Yes. About a month after I began to work, and

1	mp) Hershkowitz-direct
2	I paid him the remaining five \$60 payments, and that was the
3	end of it.
4	O How long did you begin payments after you -
5	geban work, sir?
6	A The following week.
7	Q Where did you begin work, sir?
8	A At Carter's Limousine Service.
9	Q Where would you pay Mr. Dinino?
10	A On Fridays in Carter's.
11	Q How many payments did you pay until you had
12	paid off the balance of your loan?
13	7 How many?
14	O Yes.
15	
16	Q Did you make them to anyone else besides Mr.
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2	introduced him as a friend. He said that if he is not
2	around that I should give the payments to Vinnie.
2	2 You gave two payments to Vinnie?
2	A Two payments.
1	Q Is Vinnie in the courtroom today?
1	25 A Yes.

.		Livio
1	mp90	Hershkowitz-direct
2	Q	Would vou identify him for the jury?
3	A	Right over there (indicating).
4		MR. ABZUG: Let the record reflect, your Honor,
5	that the wi	tness has identified the defendant.
6	Q	Where did you make these paymnents to Vinnie?
7	A	While we were at Al's place.
8	Q	Where, sir?
9	A	242nd Street and Broadway.
10	Q	What time did you make these payments?
11	λ	Batween 4 and 5 o'clock.
12	Q	Did you ever see anybody meet with Vinnie
13	besides you	erself?
14	A	No.
15	Q	Just yourself?
16	A	That's right.
17	ű	Approximately when did John Dinino grab you by
18	the arm and	d demand payment, sir? What was the year?
19	A	1970.
20	Ó	What part of the year, sir?
21	Α	About August.
22		MR. ABZUG: I have no further questions of
23	this witne	ss, your Honor.
24		THE COURT: Cross-examination.

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CROSS EXAMINATION

BY MR. BLAUSTEIN:

Q Mr. Hershkowitz, during this entire time that you borrowed the money from John Dinino, outside of that one incident, was your relationship with Mr. Dinino friendly?

Very friendly.

Q Very friendly. As a matter of fact, on that occasion what specifically did he do? Will you show us?

A Well, he grabbed me by the arm, and then in an angry tone of voice he said to me, "Where is the money you owe me?"

> He wanted to be repaid. 0

That's right.

And then how long did it take for that to sub-Q side?

> To pay him, you mean? A

No. For his tone to calm down. Q

About 10 or 15 minutes. A

Then everything was the same as it was before? 0

Yes. A

He never hurt you physically, did he? Q

No. A

> Did you ever see him hurt anybody else? 0

A No.

You are not afraid of him, are you?

No, not at all.

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people?

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A Not at that time. Now I am, because I have been sick for the last -- I'm on Social Security Disability and that means a lot.

MR. ABZUG: I am glad the defendant finds it so funny, your Honor.

THE COURT: What do you mean that you are now?

THE WITNESS: Well, I have been on Social

Security Disability since June of '73.

THE COURT: Why would that make you afraid of Mr. Dinino?

THE WITNESS: I'm not as strong as I used to be.

THE COURT: Why do you need to be strong?

THE WITNESS: John is 30 years younger than I

am.

BY MR. BLAUSTEIN:

Q Was that remark made in some way to be facetious?

A No.

THE COURT: Do you know what "facetious" means?

THE WITNESS: Yes.

THE COURT: We are all wondering what you meant by that when you said you are afraid of him now.

THE WITNESS: Because I am a sick man right now.

He is a young, strong boy.

O During the period when he was loaning you money,

were you afraid of him?

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A No.

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MR. BLAUSTEIN: I have nothing further.

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THE COURT: All right. Is there any cross-

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examination, Mr. Peluso?

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MR. PELUSO: Very briefly, Judge.

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CROSS EXAMINATION

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BY MR. PELUSO:

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O Mr. Hershkowitz, back in October, October 10,

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1973, you were interviewed by some agents, is that right,

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October 3, 1973?

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A It could have been then, but I don't remember the

14

exact year.

the Bronx?

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O This was your first interview with the agents.

Yes.

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O And this took place at 2686 Bailey Avenue in

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Yes.

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Q How much time did you spend with the agents on that occasion when they spoke to you?

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A I'd say about a half-hour.

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Q And they asked you questions about the Activities

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A I don't think so.

Act Al's and Carter's --

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Q Well, they asked you questions about Mr. Dinino and about borrowing money, is that correct?

A They showed me pictures of John and Vinnie. They asked me if I knew them.

Q You say they showed you pictures of Vinnie on that day?

> Yes. A

You are certain of that, sir?

A Positive.

MR. PELUSO: Judge, may we approach the bench at this time?

THE COURT: Yes.

(At the side bar.)

MR. PELUSO: I have here, Judge, Government's Exhibit 3547, which is the report made by the agent of that interview.

Although there were photographs displayed, there is no mention of a photograph of Mr. De Vito being displayed at all. There is no mention of Mr. De Vito at all here.

Now, if there is an additional report to this meeting, I think we should have it. If not, Judge, I would like to mark this and offer this in evidence at this time.

THE COURT: I assume there is no other report.

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MR. ABZUG: Absolutely not, your Honor.

THE COURT: All right.

(In open court.)

MR. PELUSO: At this time, if your Honor please,
I would ask that Government's Exhibit 3547 be marked as
Defendants' Exhibit C for identification.

THE COURT: All right.

(Defendants' Exhibit C marked for identification.)

MR. PELUSO: If your Honor please, at this time
I am going to offer Defendants' Exhibit C for identification
in evidence.

MR. ABZUG: There is an objection, your Honor, a strenuous one.

It is totally collateral. You can impeach the witness forever on these minor points.

THE COURT: Let me see that.

MR. PELUSO: All right (handing).

THE COURT: Well, does the government concede that this is the substance of what Mr. Hershkowitz told the FBI on October 10, 1973? Is there a question about its accuracy?

MR. ABZUG: No. The government concedes he was shown a list of pictures.

	M. The state of th
1	mp97 Hershkowitz-cross
2	THE COURT: I am not asking you that.
3	MR. ABZUG: Yes, we do concede that, your
4	Honor.
5	THE COURT: I overrule the objection and a it.
6	Exhibit C.
7	(Defendants' Exhibit C received in
8	evidence.)
9	MR. PELUSO: Judge, may I pass this around to
10	the jury at this time?
11	MR. ABZUG: I object, your Honor. The jury can
12	have the evidence when they go in to deliberation.
13	MR. PELUSO: Rather than read it.
14	THE COURT: Read it. Why don't you read it?
15	MR. PELUSO: May I have a stipulation from the
16	U.S. Attorney that Defendants' Exhibit C which is in evi-
17	dence is the substance of the conversation between Mr.
18	Hershkowitz
19	THE COURT: He has so stipulated.
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21	of any photograph of Mr. De Vito having been shown to Mr.
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24	MR. ABZUG: He can read it, your Honor.

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THE COURT: Mr. Abzug, I want to save time.

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Any lawyer is entitled, wher an exhibit is in, to have it displayed to the jury at that time. What Mr. Peluso is doing is offering a very simple exhibit. One facet of this is that does it refer to the showing of any photograph.

MR. PELUSO: Yes, but not Mr. De Vito's.

THE COURT: Okay. If it doesn't, it doesn't.

Can we go on to the next point?

MR. PELUSO: That is all.

MR. ABZUG: Yes, I do, your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. ABZUG:

- Q Mr. Hershkowitz, at the time that Mr. Dinino grabbed you, what was the state of your health, sir?
 - A Well, I was sick at the time.
 - Q What did you feel when he grabbed you?
 - A Well, I didn't feel any actual pain.
 - Q What were your emotions, sir?

MR. BLAUSTEIN: I object to that.

THE COURT: Overruled.

- A I was a little angry at him.
- Q Any other emotions, sir?

That's about all.

Q Mr. Hershkowitz, do you recall testifying before the grand jury?

A I do.

MR. WALLACH: Your Honor, we renew the objection.

THE COURT: Overruled. There are uses and uses. I think this is a different situation than when we were concerned with before.

MR. WALLACH: Sorry, Judge.

(Government's Exhibit 9 marked for identification.)

MR. PELUSO: Judge, I object to this as being improper redirect examination.

THE COURT: I will overrule that.

Q I am showing you what has been marked for identification only as Government's Exhibit 9, and directing your attention to line 23 on page 4 and line 9 on page 5.

Does that refresh your recollection as to the emotions you experienced when Mr. Dinino grabbed you by the arm and demanded payment?

A Yes.

Q What were those emotions that you experienced, sir?

that. In other words, I was out about 12 weeks altogether.

Hershkowitz-recross mp101 THE COURT: This was after about eight weeks? THE WITNESS: Yes. THE COURT: Okay. BY MR. BLAUSTEIN: Q This motion or action that Mr. Dinino took in regard to your arm, did that hurt you? A No. MR. BLAUSTEIN: That's all. THE COURT: All right. Thank you very much. (Witness excused.) MR. ABZUG: The government calls Ronald Levine.

Is John Dinino in the courtroom, sir?

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A Yes.

Q Would you identify him to the jury?

A That's John (indicating).

Who is Vinnie? Is he in the courtroom today?

A Yes (indicating).

MR. WALLACH: Objection, Judge. May we step up?

This is important. I raised it before, Judge.

THE COURT: All right.

(At the side bar.)

MR. WALLACH: Judge, in your chambers I made known that we first learned today or last night that there may have been photographic identification of the defendants. I respectfully draw your Honor's attention to Section 3504 of Title 18.

I ask for an evidentiary hearing outside the presence of the jury as to whether the identification of this witness -- that the source may have been the photograph shown to him at pretrial, and whether it was unduly suggestive.

THE COURT: There has been no testimony about photographic testimony. What is the basis for this?

MR. WALLACH: Your Honor, let me go back.

I have an opinion that I just got. It is a question of

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photographic identification.

MR. BLAUSTEIN: Your Honor, may we have a recess?

THE COURT: All right.

MR. PELUSO: Government's Exhibit 3539 --

MR. ABZUG: May I be heard, your Honor?

MR. WALLACH: Your Honor, I direct your attention to Brathwaite v. Manson. It just came down.

THE COURT: Let me see that sheet of paper.

3539, that is an FBI report of 5/22/74 that simply says
that Levine possibly identified the photograph of Vincent
De Vito as the person he knows as Vinnia.

This really does not mean anything by itself. What is the evidence going to be?

MR. ABZUG: Copious, your Honor. He met Mr. De Vito about 59 times before that.

THE COURT: In these cases where you see somebody in the dim light in the alley -- you know, this is not one of these cases.

MR. WALLACH: I understand the situation, but we had no knowledge.

THE COURT: Let's proceed.

(In open court.)

THE COURT: I think we have to have another break,

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A I think it was late '70 or early '71.

A Interest on the money that you borrow. You pay \$5 on \$100 until any part of it -- every part \$100 you pay \$5 and that comes off -- you pay the whole \$500 and you owe nothing after that.

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Q Does the \$25 vig reduce the principal, sir?

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1	mp107 Levine-direct
2	A No.
3	Q Did you receive anything at that meeting, sir?
4	A Well, I got the \$500 and I brought it down to
5	Al's Taxi.
6	Q How did you receive the \$500, sir?
7	A Five \$100 bills.
8	Q Following your conversation with Mr. Dinino,
9	did you make any payments on this loan?
10	A Yes. I was paying it \$25 a week. Actually,
11	it was Phil who paid it at the beginning, and I wound up
12	paying it because he didn't have any money.
13	I was paying it for a while, and finally I
14	couldn't pay it any more. I told Phil.
15	Q How long did you personally pay the \$25, sir?
16	THE COURT: Who were you borrowing it for?
17	THE WITNESS: Phil Jackson.
18	THE COURT: And when you started making these
19	\$25 payments did Phil give you the \$25?
20	THE WITNESS: At the beginning, yes, he was
21	giving it to me.
22	THE COURT: And would you then give it to
23	THE WITNESS: John or Vinnie. Whichever one was
24	around.
25	THE COURT: All right. Go ahead.

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1	mp108 Levine-direct
2	Q Approximately how many payments did Phil give to
3	you to give either to John or Vinnie?
4	A He paid for a couple of months.
5	Q Then what happened at the end of a couple of
6	month:?
7	A Then I started paying it. He couldn't pay it
8	any more.
9	O Did you work continuously? Were you employed
10	during this period that you were paying this?
11	A I was employed first at Al's Taxi, and then I
12	went up to Carter Cab.
13	Q When did you go to Carter Cab, sir?
14	A Like the first couple of months of '71. Maybe
15	February or March.
16	O Did there come a time that you worked at a
17	restaurant, sir?
18	
19	Hall at the restaurant called Blimpy's. I went work
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22	the \$500 loan from John Dinino and when you went to work at
2	this restaurant?
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2	You worked at the restaurant for how long?

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He told me -- you see, Phil told me that he told

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1	mp111	Levine-direct
2	or Phil.	
3	Q	What were your emotions during the conver-
4	sation, sir	?
5	A	There were no emotions. I was just there
6	watching it	
7	Ö	You had no emotions whatsoever, sir?
8	A	I felt uneasy like I am right now.
9	Q	Why did you feel uneasy, sir?
10	А	Because there was an argument going on.
11	Q	Any other reason, sir?
12	Λ	There was no other reason.
13	Ď	Directing your attention to the summer of 1972,
14	did you owe	anybody money at that time, sir?
15	A	Yes. I borrowed money off Vinnie at that time?
16	Q	How much did you borrow from Mr.De Vito?
17	A	About \$300.
18	Q	Where did you borrow this, sir?
19	A	In Carter Cab.
20	Q	When did you borrow this, sir?
21	A	I think it was either November or December of
22	'72.	
23	Q	Did you have a conversation with Mr. De Vito?
24	Λ.	Yes. He just told me, you know, actually I knew

how much it was, but it was said that it was \$36 for 10

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weeks.

3 Q How did you know, sir?

A Well, it was common knowledge what you pay a person that is loaning money.

Q Was it common knowledge what would happen if you missed a payment, sir?

MR. PELUSO: I object to that, your Honor.

- Q Did Mr. De Vito tell you what would happen if you missed a payment, sir?
 - A Mr. De Vito was a perfect gentleman.
 - Q That's not my question.

MR. WALLACH: That is an answer, your Honor.

THE COURT: Did you get the \$300 loan from Dinino or De Vito?

THE WITNESS: I got it from Mr. De Vito.

Q The question, sir, is did Mr. De Vito tell you what would happen if you missed a payment?

A Well, there was a vig charge if you missed it.

A \$10 vig charge.

- Q Did you subsequently reduce the balance of this loan?
 - A Yes. I think I got it down to \$180.
 - Q How did you get it down to \$180?
 - A I paid for five weeks and \$36 each week.

	256
1	mpl13 Levine-direct
2	Q Who did you pay, sir?
3	A To Vinnie.
4	Q Where did you make the payments, sir?
5	A At Carter Cab.
6	Q What times?
7	A In the afternoon.
8	Q What day, sir?
9	A Usually it was on a Friday.
10	Q Did you see Mr. De Vito meet anybody else at
11	Carter Cab during the year of 1972?
12	A Well, there were certain men that met him out-
13	side the place.
14	Q Who were those men, sir?
15	A Hy Segal met him outside the place. Sherman
16	Ronson met him outside the place. That's about it.
17	Q What, if anything, did you observe when this
18	happaned, sir?
19	A Just them talking.
20	Q How many times did you witness this, sir?
21	A I was a driver at Carter Cab, and I used to go
22	in and out. I was driving.
23	When I used to come in I would see at certain
24	times that people were talking.
25	Ω How many times, sir, approximately? Was it a

The fact that Vinnie was buying up the loan

He agreed to it.

What did he agree to?

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2 from Ralsky.

- Q He was buying up Sherman Ronson's loan as well?
- I don't know for sure.
- What did he agree to, sir? You were present at this conversation.
- A I don't know that. You have to ask Sherman Ronson.

I was listening to my own conversation.

- Q Did you overhear Mr. De Vito say anything to Mr. Ralsky about Sherman Ronson during that conversation, sir?
- A I did not hear directly. Sherman Ronson was saying -- we were talking -- we always talk in the place.
- Q Did you overhear Mr. De Vito say anything to Mr. Ralsky about money that Mr. Ronson may have owed Mr. Ralsky?
 - A I am saying you have to ask Mr. Sherman Ronson.
- Q I'm asking you, sir, and you are on the witness stand. What is your answer?
- A As an individual I can answer for myself. I did have consolidation of my loans. Mr. Ronson -- you would have to ask him.
- THE COURT: The question is, and we will have it once more, did you hear the conversation, or did you hear any conversation with Mr. Ronson?

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sir?

Q How much were you making at Carter Cab weekly,

loan was paid off.

Q Did you have a conversation with Mr. Dinino?

A Yes. I borrowed money from Johnny.

I was free and clear, and then Johnny came

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around after that.

1	mpl19 Levine-direct
2	Q Did you have a conversation with him at that
3	time about Mr. De Vito?
4	A Well
5	MR. WALLACH: I object to that.
6	THE COURT: Overruled.
7	Q Mr. Levine, your testimony was that Mr. De Vito
8	collected payments from you until early 1972.
9	A And then John came around.
10	Q John comes around, and did you say anything to
11	John about Mr. De Vito's absence?
12	A I knew that Johnny was coming around.
13	
14	A Vinnie must have mentioned it to me.
15	MR. WALLACH: "Must have mentioned it" calls for
16	a conclusion.
1'	THE COURT: Overruled.
1	8 Q What did Vinnie say about Mr. Dinino coming
1	9 around?
1	That Johnny would be collecting, that's all.
,	21 Q After this conversation that you had with Mr.
	22 De Vito and he said that Johnny would be collecting, what
	23 happened after that?
	A Well, if I finished paying my loan out and I
	25 borrowed some more money

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1	mp120 Levine-direct
2	Q Who did you finish paying the loan to, sir?
3	A I believe I finished paying it to Vinnie.
4	O How much did you borrow from Mr. Dinino after
5	you finished paying Mr. De Vito?
6	A I was borrowing pretty regular. I don't remember
7	how much I borrowed.
8	Q Do you recall giving the statement to the
9	MR. WALLACH: Objection, Judge.
10	Q Federal Bureau of Investigation?
11	MR. WALLACH: Objection, Judge.
12	THE COURT: What is the objection?
13	MR. WALLACH: This is referring to prior unsworn
14	testimony. This is not a hostile witness. He is getting
15	the answers to the questions he is asking.
16	
17	answer does not mean the witness is hostile or otherwise.
18	
1	THE COURT: Are you going to mark something for
2	identification?
2	MR. ABZUG: I want to refresh his recollection,
:	your Honor.
	THE COURT: All right, you can attempt to do that.
	(Government's Exhibit 10 marked for
	25 identification.)

xx

sir?

1	mp121	Levine-direct
2	Ω	Sir, you do recall interviews that you had with
3	the Federal	Bureau of Investigation, do you not, sir?
4	A	Yes.
5	ű	And in those interviews you discussed your
6	relationshi	p with Mr. Dinino, did you not, sir?
7	A	Yes.
8	Ω	I show you what has been marked for identifi-
9	fication or	aly as Government's Exhibit 10, and direct your
10	attention t	to the second page of your statement.
11		I ask you if that refreshes your recollection
12	as to when	you borrowed money from Mr. Dinino?
13	A	That's correct. From what I read, right, \$300
14	and \$39 for	r
15		THE COURT: What is the answer?
16		THE WITNESS: Yes. Yes.
17		THE COURT: Yes what?
18		THE WITNESS: Yes, sir.
19		THE COURT: No. You were asking bout the date
20	of a parti	cular loan.
21	O	When did you borrow the money from John Dinino,
22	sir?	
23	A	In September of '72.
24	Q	Do you recall how much you borrowed from him,

		200
1	mp122	Lavine-direct
2	A	\$300.
3	Ω	Do you recall where you borrowed it, sir?
4	λ	In Carter Cab Company.
5	Q	At that time did you have a conversation with
6	Mr. Dinino?	
7	A	Yes.
8	Q	What was the nature of that conversation?
9	A	Well, the payments for the \$300 were \$39 a week.
10	Q	Is that what Mr. Dinino told you?
11		THE COURT: Mr. Abzug, I have a feeling that
12	they were v	ery familiar with the terms of these loans.
13		Can we get to some other point if there is any?
14	A	Prior to the receipt of this loan in September
15	of 1972, di	d you see John Dining at Carter Cab?
16	A	Yes.
17	O	For what purpose, sir?
18	A	Well, besides borrowing money
19	Q	Wereyou making payments to Mr. Dinino?
20	λ	Yes.
21	Q	When, sir, and during what period of time prior
22	to 1972?	
23	A	I was borrowing money. I don't exactly remember
24	what loan	it was, but I was borrowing money. I waspaying
25	it back.	

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Well, forget exactly what it was down to, but

how that was computed?

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	267
1	mp124 Levine-direct.
2	to \$275, and he gave me the difference to a thousand
3	dollars.
4	Q So you owed him a thousand dollars, but you
5	did not receive a thousand dollars, is that correct?
6	A I received, between loans and the car, \$1000.
7	I owed \$1300.
8	Q What were the terms of repayment?
9	A \$65 a week and \$25 vig.
10	Q Directing your attention to the latter portion
11	of 1972 that we are speaking of, did you have a discussion
12	with Mr. Dinino about gambling?
13	A I asked Mr.Dinino for a number to gamble with
14	MR. BLAUSTEIN: I object to that.
15	THE COURT: I have another hearing at 4 o'clock.
16	I am afraid that we will have to adjourn now.
17	I would like to have the jury go out, and we
18	will adjourr until 10 o'clock tomorrow.
19	The jury will retire, and I will speak to the
20	lawyers.
21	MR. WALLACH: May we make that at 10.30, your
22	Honor?
23	THE COURT: We will make it at 10 o'clock.
24	Court is adjourned until 10.00 a.m.
25	(Jury left the courtroom.)

mp125

THE COURT: I want to cover a couple of points.

I have looked at the De Sisto case, and then looked again
at the New Rule of Evidence 801(d)(1). I want to discuss
briefly this matter of admitting the grand jury testimony
of Mr. Cassese.

When did he give the grand jury testimony?

MR. ABZUG: March of 1975, your Honor.

the offer of the government is clearly within Rule 801(d)(1), because that rule says that a statement is not hearsay if the declarant testifies at the trial and is subject to cross-examination concerning this statement, and the statement is inconsistent with his testimony, and is given under oath subject to the penalty of perjury at a trial hearing or other proceeding.

Now, we have very recent grand jury testimony.

He is testifying inconsistently here, or putting it another way, under the rule his testimony at the grand jury is inconsistent, and inconsistent in two regards. So far we have one answer that is flatly contradictory to what he said at the grand jury, and another answer which says he does not recall. Either way it is consistent if he gives positive testimony at the grand jury and different testimony.

It is inconsistent with the claim of lack of recollection.

That grand jury testimony was very recent. We will come back to that in a minute.

The De Sisto case, it seems to me, gives no favor to the defendants. It is fairly in fevor of the government because it rejects the rule that a prior inconsistent statement, particularly in a setting such as a grand jury, is useful only for impeachment, and it holds that it can be used for substantive evidence.

So I do not think there is any basis for excluding it.

Now, the point that Mr. Wallach makes is that somehow you are disabled from effectively cross-examining the man. I think that is not a good point. Part of my thinking on it, and just my observation of this witness and others, I find some of this claim of lack of memory very unconvincing. If he remembered in March at the grand jury, he now says when he is facing Mr. Dinino and Mr.

De Vito and their families that he suddenly does not remember. I find that somewhat unconvincing. I do not think this is a situation where you have a man who is so mentally disabled that you cannot effectively cross-examine him. I think he is capable of being cross-examined. I think the government is entitled, under the rule, to introduce this. He is here in court. He strikes

mp127

me as a perfectly able-bodied, mentally competed person.

I think simply his decision of whether he wants to testify here or not truthfully, and that is a matter not of mental incapacity, but that is a matter that both sides have to explore on examination and cross examination.

I think it would be quite unfair to the government to allow somebody to claim a loss of memory here which I find very unconvincing, and then preevent the government from introducing very recent grand jury testimony that is clearly able to introduce under the rule. So that is a long way of saying I will overrule the objection to the grand jury testimony.

I want to say something further and to everybody in the courtroom. I am not making any reference to any attorney. But these witnesses, one witness admitted fear.

Mr. Hershkowitz stated flatly that he was afraid sitting here in court, and Mr. Cassese, his condition indicated to me some of the same feeling. I just think everybody ought to know, and again I am excluding the attorneys from any reference, and I am not making any accusations against anyone obviously, but the Court and the jury and the attorneys and the government, everybody, has a right to have this trial go forward without having witnesses intimidated.

I think everybody should be warned that any

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attempt to reach and intimidate a witness is a crime. It is a crime of an obstruction of justice. Any indication that that has occurred will be followed up by the United States Attorney's Office. It goes without saying that there is to be no attempt between now and tomorrow morning to, in any way, contact, communicate or each any of these wit-7 nesses. That injunction goes for anybody in this courtroom, wives, families, friends, or anybody else. Except 9 legitimate attempts to interview these witnesses and 10 that would be the attorneys only, and no one else is to 11 communicate with them. 12

> MR. WALLACH: Your Honor, may I say something? Your Honor, in regard to your ruling about the prior grand jury testimony, I would suggest to your Henor most respectfully that your Honor conduct an evidentiary hearing outside the presence of the jury to see whether Mr. Cassese can be subjected to cross-examination. Certainly before the grand jury he was not subjected to cross-examination.

Secondly, the government has given us exculpatory material that goes to the nature of Mr. Cassese's mental condition. Now, to take a chance on cross-examination before the jury with a witness like Mr. Cassese, I don't know what would happen. It may be disastrous.

The court: I think you are exaggerating that.

This man came into court perfectly able to testify. He was as poised as could be, and he may have decided not to tell the truth. That's the question I'm concerned about.

But, as far as his mental ability to understand what is being asked of him, and to speak coherently, he obviously understands what is asked of him and he speaks coherently. There is no suggestion in that man of any incompetence to testify on direct examination or cross-examination, none at all. He was on the stand for enough time for me to draw that judgment. That is my judgment.

tomorrow, but the trouble with that is that -- well, we will consider that. We will come together at 10 o'clock. If it is appropriate to have an examination on that subject, okay. I don't see any need for it. He is a normal witness with a psychiatric problem some years ago. He may still be under some treatment, but that does not mean he cannot testify. There are many people under psychiatric treatment who testify every day in court. I think there may be other problems with this witness's testimony besides that, but let's not prolong this this afternoon. If it is appropriate tomorrow morning, we will have a short hearing out of the presence of the jury about his mental condition. We will

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mp130 2 do that.

MR. WALLACH: One more thing, your Honor. Can we have the subpoenas we executed by your Honor to make it returnable forthwith tomorrow?

THE COURT: Who were they directed to?

MR. WALLACH: The psychiatrist and medical

records.

THE COURT: We have got to finish this trial.

MR. WALLACH: Judge, we went to the marshal

yesterday.

ing.

THE COURT: Couldn't you get a process service?

You told me that the marshal could not do it. I told you

to get somebody else to do it.

That is your own doing.

MR. WALLACH: We did not anticipate this happen-

and you are saying to me that the marshal could not serve them because he was too busy. You told me yesterday the marshal could not serve them. I told you to get other means of service.

MR.WALLACH: Your Honor, last night we felt we did not need him.

THE COURT: So you did not bother to serve him?

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have very serious doubts about this. Now, I think there may have been things that went on here that these people are not willing to talk about, but the jury cannot base that on the finding of guilt under reasonable doubt. I cannot send the case to the jury on that basis. We have a flat statement by one of these people, and I'm not going to take the time to try to analyze it, but we have a flat statement by Penker that he was never — that no threats were ever made to him. I didn't hear about any threats at all.

I don't know what I can send to the jury.

Frankly, I think -- is the rest of the testimony going to be along the same line? I don't think the case can go to the jury.

MR. ABZUG: Your Honor, I think your observation is correct, but you are tarring the government's case with the same brush. Mr. Penker's case, and I would argue in light of the relationship that Mr. Penker had with Mr. Dinino, the fact that Mr. Dinino would have to check back to the office and Mr. Dinino said, "Don't get me pissed off," and the fact that Mr. Penker paid after that is sufficient basis that Mr. Dinino's cursing at Mr. Penker was the threat.

Now, that in itself, I admit, is not the most

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overwhelming case that ever came down the pike. As your Honor observed, some witnesses are afraid, but with respect to Hershkowitz and Levine, they are sufficient to go to the jury.

sense you cannot have a violation of the criminal law unless the conduct rises to a level that is, I think, a clearcut threat of the kind of thing that was talked about in the statute. Now, obviously if you just take literal language, a statement by somebody that they will punch you in the nose, that literally is a threat, but from my point of view I think that it would be a travesty, and I am sure it would not stand up for two seconds on appeal. It would not stand up with me, but that can be extortion within the statute.

We all know the kinds of things that can be and are extortion. I am saying to you that I have not heard evidence of 't. I will hear you tomorrow, but you think very serious. I thecause I am sure that there is a very serious motion to dismiss. I don't want to prolong it tonight, but I just want to let you know. Frankly, I see nothing that I can really instruct the jury about.

What would I do to summarize the evidence?
What would I do to guide them?

MR. ABZUG: You can give the charge submitted

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by the government. With all due respect, and I have the greatest respect for your Honor --

THE COURT: Everybody has respect.

MR. ABZUG: -- for your Holor's judgment, but the question here is not a question of whether in your Honor's opinion, but whether a reasonable person can find -and the facts in this case, for example, and that the extension of credit was made, and in connection with the repayment of that extension of credit, John Dinino threatened to punch him in the nose.

THE COURT: I do not want to prolong it, but I want to tell you again for the umpteenth time that I think you better think seriously overnight because I have in mind the statute.

That is all.

(Adjourned to December 3, 1975, at 10.00 a.m.)

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UNITED STATES OF AMERICA

v.

75 CR 265

JOHN DININO and VINCENT DE VITO

> December 3, 1975 10:30 A.M.

(Trial Resumed)

(In open court - jury present)

RONALD LEVINE, resumed the

stand, having been previously sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. ABZUG:

Q Mr. Levine, I want to direct your attention back to the conversation that you were describing to the jury between Mr. Dinino and Mr. Jackson and yourself during which Mr. Dinino discovered that the money, \$500 he had given to you, had in fact gone to Mr. Jackson.

After you had the conversation with Mr. Dinino in late '71, how did you feel, sir?

- I felt a little uneasy.
- Did you feel more than uneasy, sir? MR. BLOUSTEIN: I object to that, your Honor,

as leading.

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THE COURT: Overruled.

MR. PELUSO: May we have an answer from the witness, Judge? I believe he shook his head.

THE COURT: What is your answer?

THE WITNESS: My answer is that I felt uneasy.

Yes, I felt uneasy.

Q Do you recall testifying before the grand jury, sir?

A Yes.

Q Do you recall testifying in October of 1973?

A Yes.

Q Do you recall giving the following answers to the following questions --

MR. BLOUSTEIN: Excuse me. Where are you reading from, Mr. Abzug?

MR. ABZUG: Page 21.

Q "Q What did he say to your friend?

"A He mentioned that he was going to kick him in the balls.

"Q Do you know why Dinino made this threat?

"A I borrowed for a man \$500 with John and Vinny present. That was his partner, and I was introduced to these two from another person, Louis Materasso, his name

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was, and I borrowed this money for Phil Jackson, a friend of mine, and I was working at the time for Al's Taxi.

"After I borrowed the money and I went to
work downtown in a Blimpy-type restaurant and I left
for eight months and when I came back it seemed that Phil
and John had straightened the thing out, and when I
walked into the place, he told me that I had to pay the
money.

"John in a very nasty way, he mentioned it.

"Q What did he say?

"A He said that I am going to pay the money, he didn't want any shit going on.

"Q Was he loud?

"A Yes.

"Q Was he yelling?

"A Yes.

" Were you frightened?

"A Yes."

Do you recall giving that testimony, sir?

A Yes.

Q How did Mr. Jackson appear to you during this conversation?

Well, he was angry. He was shouting.

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"A Phil and him went sutside and myself and the two started yelling back and forth, and then a fellow named Arnold settled the whole thing, but John said that doesn't go any more because I'm back, and that's when he said that he was going to kick him.

- "Q That's when John said he would kick Phil?
- "A Phil Jackson, right.
- "Q What did Dinino look like when he was engaged in this discussion?
 - "A Very angry.
 - "Q How did Jackson look?
 - "A He was angry and scared at the same time."

 Do you recall giving that testimony, sir?
 - A Well, I tell you, I might have said --
 - Q Do you recall giving that testimony?

A No, I do not know Arnold and I never did know Arnold and I could have never possibly have mentioned Arnold's name, unless it was said into me. I don't know an Arnold and I never did.

The other part of the testimony is true, this part with Arnold, I don't even know Arnold.

- Q Do you recall saying that Mr. Jackson looked angry and scared at the same time?
 - A Yes.

1	hjw 6	Levine - direct
2		THE COURT: He said he recalls that.
3		THE WITNESS: Yes, I don't know an Arnold.
4		THE COURT: Let's go on.
5	Q	Directing your attention, Mr. Levine, to the
6	latter part	of 1972, did you, sir, have a discussion with
7	Mr. Dinino	about gambling?
8	A	Yes, I asked him for a number.
9	Q	What type of a number, sir?
10	Λ	To gamble with.
11	Q	A telephone number, sir?
12	A	Yes.
13	Q	How many telephone numbers?
14	A	I had two numbers to gamble with.
15	Q	And he gave you both these numbers, sir?
16	A	Yes.
17	Q	What if anything else did Mr. Dinino say to
18	you during	this conversation?
19	A	Nothing else. Just
20	Q	Did he give you a code name?
21	A	Oh, yes, I was American for Lucky.
22	Q	Mr. Dinino gave you that?
23	A	Yes.
24		MR. BLOUSTEIN: I didn't hear that.
25		THE WITNESS: I was American for Lucky.

- 11	200
1	hjw 7 Levine - d_rect
2	Q Would you describe to the jury how you would
3	utilize these numbers, please?
4	A I would call up and say my name is American
5	for Lucky and I would make my bets.
6	Q What type of what would be the response
7	on the other end of the line, sir?
8	A Go ahead.
9	Q Would there be a callback number as well?
10	A There was also one callback number, yes.
11	Q Could you describe to the jury how the callback
12	number operates?
13	A I'd call a number and a guy would get on the
14	phone and say his name was Foxy and he would ask me for
15	my number and he would call me back, whatever number I
16	had.
17	Q How did you pay losing wagers let me ask
18	you this.
19	How long did you utilize these telephone
20	numbers that were given to you by Mr. Dinino?
21	MR. WALLACH: I object to this, Judge.
22	THE COURT: What ground?
23	MR. WALLACH: It is collateral, Judge.
24	THE COURT: Overruled.
25	Q How long did you utilize these telephone

numbers?

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24 25 A A month or so.

Q Would you describe to the jury how losing wagers were paid and winning wagers were collected?

A It started -- the week started on a Monday and ended on a Sunday, and then Johnny would come around on Mondays and you would either get paid or he would collect.

- Q What days would Mr. Dinino collect, sir?
- A On a Monday.
- Q Approximately how much would he collect?
- A Whatever you lost or he would pay you whatever you won.
- Q What was the range of your winning and losing figures?

A It could be anything. I could have won from 100, I could have won to \$1,000. I could have won from 100 to \$1,000.

No, excuse me. The most I could have lost was \$500.

- Q Why do you say that?
- A Because I had a limit on me of \$500. I could have won anything.
 - Q Who gave you that, sir?

1	lhjw 9	Levine - direct
2	A	John gave me the limit.
3	Q	Approximately how many times did you meet
4	with Mr. Di	mino to settle up?
5	A	He used to come around every week.
6	Q	What time, sir?
7	A	In the afternoons, around 5:00 o'clock.
8	Q	Where, sir?
9	A	Carter Cab.
10	Q	Were you always able to promptly settle up
11	with Mr. Di	nino?
12	A	Almost always. One time I wasn't able to,
13	I didn't ha	ve the money.
14	Q	How much money did you owe him at that time,
15	sir?	
16	A	About \$500.
17	Q	Did you have a conversation with him?
18	A	Yes.
19	Q	What did you say to him where was the
20	conversation	on?
21	A	Outside of Carter Cah.
22	Q	Who was there?
23	A	Just myself and Johnny.
24	Q	About what time was the conversation?
25	Λ	About 5:00 o'clock at night.

	288
1	lhjw 10 Levine - direct
2	Q What did he say to you and what did you say
3	to him?
4	A I told him that I lost and I didn't have the
5	money to pay that week, you know, that I had was short
6	money, and he said that I had to have it. He said because,
7	you know, he didn't want to hear it. He had to have it
8	that week. He was responsible for the money, so he had
9	to have it.
10	Q Did he say who he was responsible to?
-11	A No.
12	THE COURT: You owed him what?
13	THE WITNESS: \$500.
14	Q Did he say anything else, sir?
15	A Well, he just said that he wanted the money,
16	he didr'twant to hear it. He wanted the money.
17	Q Did he say anything else, sir?
18	A No.
19	Q Mr. Levine, do you recall testifying before
20	the grand jury, don't you, sir?
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22	(Government's Exhibit 11 was marked
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2	tion only as Government's Exhibit 11 and directing your

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Judge.

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THE COURT: Mr. Wallach, sit down. He is reading the testimony. That is all right.

Q "Q At any time during the past five years were you threatened by Mr. Dinino or any of these individuals acting on his behalf?"

Your answer, Mr. Levine, "I was threatened one time. I used to gamble with him and one time when I gambled and I lost heavily, I didn't have the money to pay, and John said he was going to send around a few guys to straighten me out."

Do you recall giving that testimony, sir?

A I recall being under pressure and giving the testimony, yes.

Q How did you feel at the end of Mr. Dinino's remarks to you in the fall of 19 --

A As I told you many, many times, I was never afraid of John Dinino.

Q I want to know how you felt, sir. That's the question.

A I felt uneasy.

Q Do you recall giving this answer to this question:

"Q Were you afraid?

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"A Yes.

"Q Why did you repay John Dinino the money that you borrowed from him?

"A I paid him because if I didn't I was afraid of consequences that were going to happen.

"Q What consequences?

"A Get beat up, have a leg broken, or something."

Do you remember giving that testimony?

A Under pressure from the federal attorney, I remember giving that testimony.

Q What if anything did you do after this conversation with Mr. Jinino?

A What do you mean, what did I do after?

Q What did you do? Did you take any action?
You owed him \$500 --

A Yes, I borrowed the money from a shylock and I paid John the money I owed him.

What was that shylock's name?

A Norman Ralsky.

Ω How soon after Mr. Dinino threatened you did
you borrow from Norman Ralsky?

A I borrowed it right away.

Q Right away? How much did you borrow from him?

I think I borrowed from him, I borrowed \$500.

li	202
1	1hjw 14 Levine - direct
2	Q What did you do with the money, sir?
3	A I gave John the money I owed him.
4	Q Following the last money that you received
5	from John Dinino in November of 1972, did you make pay-
6	ments to John Dinino.
7	A Yes, I was paying him.
8	Q How much, sir?
9	A I was paying him, I think, 50 or 65 a week or
10	25 vig.
11	Q Were you able to make these 50 to \$65 payments
12	or did you make the vig, sir?
13	A I was making vig for a while and then I got
14	on my feet after I paid the other guy off and I was paying
15	payments.
16	Q Would you explain to the jury what a vig is?
17	A Vig is money if you don't have the principal
18	to pay them the whole entire \$65, if you come up short
19	you pay 25 vig. Nothing comes off the top.
20	Q. Do you remember how much you owed him at that
21	time, sir, when you were making these payments beginning
22	in November of '72?
23	A T owed him \$1300.
24	o where would you make these payments, sir?
25	A At Carter Cab.

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1	lhjw 15	Levine - direct
2	Q	To whom?
3	A	To Johnny.
4	Q	Anyone else, sir?
5	A	If Johnny wasn't around, Vinny would come
6	around.	
7	Q	Vinny DeVito, the defendant here, is that
8	correct?	
9	A	Right.
10	Q	When did you make your last payment, sir?
11	A	I didn't make a last payment.
12	Q	Are you still paying John Dinino now?
13	A	No, I am not.
14	Q	When did you make your last payment?
15	A	I really can't recall. I think it was sometime
16	in '74 or	late '73 or '74. When the FBI started to
17	come aroun	d.
18	Q	Mr. Dinino disappeared when the FBI started
19	coming arc	ound, is that correct?
20		MR. BLOUSTEIN: I object to that.
21		MR. PELUSO: I object to that.
22		THE COURT: Sustained as to form. Let's not
23	put it in	a pejorative argumentative fashion. You do not
24	need to a	rgue through your questions, okay?

MR. ABZUG: Yes, your Honor.

Where did you play, in the Bronx?

- A He was there whenever I went up there.
- Q You testified this morning in answer to some questions Mr. Abzug asked you about some grand jury testimony you gave back, I think in 1973, October 19th, and you said some answers were given under pressure.
 - A Yes, sir.
- Q "ould you explain to his Honor and the jury what you meant by that?

A Well, with the federal attorney, the first time that I ever saw him -- the first thing I ever said when they asked me, I lied to the FBI, they asked me if I know John, do I know Vinny, do I know Norman Ralsky.

I told them I didn't know them and I didn't want to know nothing.

- Q Why did you do that?
- A Because I happened to have liked John and Vinny, and I didn't want to be involved in anything like this because there was no -- as far as I was concerned, there was no grounds for anything.

I had no reason for getting people sent up for nothing at all, as far as I was concerned.

- Q Were you under oath when you lied?
- A Well, I didn't exactly lie. It wasn't lies. There were times that things were said, but you have to

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Levine - cross

know the person involved to know exactly what it was meant by it.

I could walk up to one of them -- I could walk up to John and say anything I want to John, you know, because he knew that -- it was like something that just happened, that's all.

That's the type of way we were around there.

Q Tell us more about this pressure that you were under.

A I went in to see the federal attorney, it wasn't Mr. Abzug, it was Mr. Padgett, and I went in as an unstable person. I was terrified, let's put it that way, and I went in and Mr. Padgett went and said to me.

There is a witness that sort of like plays our type of game and goes along with what we say and then there is a witness that is a hostile witness. You have your choice.

You can either be one of our witnesses or you can be a hostile witness."

- Q What role did you rant to play?
- A I didn't want to get into any trouble. I never broke the law in my life and I didn't want to start.
- Q Is that why you answered questions that were not truthful?

A The questions -- you don't understand. The questions were not untrue. John did say things which to me meant absolutely nothing.

In other words, that's how we talked to each other. It was nothing that -- there was nothing meant by anything that me and John would say.

Q In other words, was there a jargon that was used between you, you and the other men and John?

A Yes. We had our own little clique in

Carter Cab that used to get along together quite well

before anybody came around, and me, I would see John,

I don't want -- there were other guys involved, there

was Louie, there was Phil, Billy, we all got along good.

Q Let me ask jou this, Mr. Levine:

When somebody says to you in the vicinity of Carter Cab or Al's Taxi or wherever you were, "I am going to kick you in the balls," what does that mean to you?

- A It depends upon who it is coming from.
- Q And how it was said?
- A Yes.
- Q And it means different things at different times?
 - A Definitely.

Mr. Levine, when did you first meet Mr. DeVito?

1	1hjw 25 Levine - cross
2	have heard testimony between Mr. Dinino and Mr. Jackson
3	about what we have referred to as kicking a man in the
4	balls, where did this happen?
5	A In front of Al's Taxi.
6	Q Where was Mr. Dinino and where was Mr. Jackson
7	when this conversation took place?
8	A They were facing each other.
9	Q Were they inside or outside
10	A Right outside the front door.
.11	Q Where were you, sir?
12	A I was like right on the side of both of them.
13	Q The conversation about which you have
14	testified where Mr. Dinino said he would kick Mr. Jackson
15	in the balls, were those the exact words that were spoken
16	or is that the substance of the conversation between
17	them?
18	A No, that was the truth.
19	Q Pardon?
20	A That was what was said.
21	Q You heard the word "kick"?
22	A Yes. It was yes. That's what was said.
23	Q If I were to tell you, sir, that Mr. Jackson
24	testified before the grand jury on October 19, 1973, and

he said --

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3 Let's go on.

O Is that so?

A I can't remember that. I know the word balls was used.

THE COURT: It is a helpful distinction.

THE COURT: Let's move on. We have had enough of this.

Q Let me ask you this: If you heard that expression, to bust one's balls --

THE COURT: Can't we go on? We have been over this same phrase endlessly. Is there another point we can get to?

MR. PELUSO: Judge, I want to make one point on this, if I may.

THE COURT: The point is that he may have used the word "bust" and not "kick". Fine.

MR. PELUSO: May I proceed to my point, Judge?

THE COURT: It does not take a half hour to

make that point.

Q You have heard this expression used in a sense other than a physical sense of actually doing injury?

When someone wants to annoy someone they say they will bust them, isn't that right?

A Yes.

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1	lhjw 28 Levine - cross
2	Q In fact, when you are borrowing money from
3	the bank and you don't pay them, they send you annoying
4	letters, isn't that right?
5	MR. ABZUG: Objection.
6	THF COURT: Sustained.
7	Q You have heard people refer to that, haven't
8	you, in the same sense?
9	MR. ABZUG: Objection.
10	THE COURT: Look, annoying letters is meaning-
11	less and we are not trying a case involving a bank, and
12	I will sustain the objection.
13	Let's go on.
14	Q Are you friendly with Mr. DeVito today?
15	A I haven't seen him in years. I haven't seen
16	him like since, you know, about three years ago.
17	Q Is there a feeling of animosity between you
18	and Mr. DeVito?
19	A None that I know of.
20	Q Is there a feeling of animosity between you
21	and Mr. Dinino?
2	A I always liked John, 'till today.
2	MR. PELUSO: I have no further questions.

lhjw 33

session that we talked about last night. We will go ahead with the regular testimony of Mr. Cassese, please. You can cross examine when your time comes or Mr. Peluso can.

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PHILIP CASSESE, called as

a witness, being previously sworn, testified further as follows:

THE COURT You are still under oath, Mr.

Cassese, sit down.

DIRECT EXAMINATION CONTINUED

BY MR. ABZUG:

Q Mr. Cassese, I am directing your attention now to the time period extending from 1970 to 1973 when you testified yesterday that you borrowed \$500 from Mr. Dinino and paid him approximately \$50 back.

How many payments did you make to him during this period, sir?

A Well, I might say ten payments.

Q When was this interest paid, this \$50 which you are speaking of?

A Well, probably at the time when I finished the payment of the original loan.

Q So it is your testimony that it was one lump sum, is that correct?

Yes.

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I believe this is so. I believe it is true,

such as banks, finance companies.

Pardon?

A 6 for 5 loan?

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of interest. A 6 for 5 loan, would you explain to the jury what that is, sir?

Is this known as a 6 for 5 loan, sir?

I may have agreed to pay an extra few points

For every \$5 that is borrowed, you agree to pay back 6, in most cases. Not all cases.

Getting back to my original question, sir,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLLY WHARL NEW YORK NY

1	lhjw 37 Cassese - direct
2	did you make the vig payments were payments other than
3	the interest that was paid on the principal, is that
4	correct?
5	A The vig payments was towards the principal.
6	Q Did you make these vig payments on one occasion
7	or on a number of occasions, sir?
8	A On several occasions. According to the agree-
9	ments between myself and
10	THE COURT: Are you talking about vig of
11	big?
12	THE WITNESS: Pardon me?
13	THE COURT: Are you using the word "vig" or
14	"big"?
15	MR. ABZUG: Vig, v-i-g, your Honor. Vigorish.
16	THE COURT: You mad some vig payments?
17	THE WITNESS: I thought he meant payments
18	towards the principal.
19	THE COURT: He asked you about vig payments
20	as you defined a few minutes ago. Did you make some of
21	those?
22	THE WITNESS: Well, at the end of the so-called
23	paying towards the interest, I would also pay a little
24	interest or a little more than the amount borrowed.
25	THE COURT: The way vig has been defined

before in the case? If you were obligated to pay a certain amount a week on one of these 6 for 5 loans, suppose you are supposed to pay \$60, or whatever it is, then if you can't make that then you pay this vig payment of a certain amount of money as a kind of penalty.

Isn't that the way it has been defined?

MR. ABZUG: Yes, your Honor.

THE COURT: That is really the question he is asking you.

Did you ever make such payments --

THE WITNESS: If I was unable to come up with an agreed payment, I would be permitted to make the agreed payment later on during the week or during the month when I accumulate it.

In other words, I didn't really pay any what is you say vig. Let's say I was supposed to come up with a payment today and I didn't have it. I would be given more time to come up with it.

THE COURT: In the meantime, did you have to pay anything extra?

THE WITNESS: No, no, nothing extra, to my knowledge. Not -- because the agreement was that I would make a certain amount of a payment each week.

Q Is it your testimony, sir, that if you missed

1	1hjw 39 Cassese - direct
2	one of these payments, you didn't have to pay anything
3	extra?
4	THE COURT: He has just said that.
5	A Yes, I think that's what I said, sir.
6	Q Do you recall testifying before the grand
7	jury, sir?
8	A Do I recall testifying?
9	THE COURT: You do not have to ask him. If
10	you want to refer to the grand jury, I told you, you can
11	simply read it or you can use it to refresh his memory.
12	That is up to you, Mr. Abzug. We have got those ground
13	rules set out. Okay?
14	MR. ABZUG: Yes, your Honor, I am sorry.
15	Q "Q Well, I am not talking about if you
16	missed the payments, I am asking you now whether as the
17	condition of these loans you had to make weekly payments
18	back to Mr. Dinino.
19	"A Yes.
20	"Q And if you missed one of these payments, you
21	had to pay an additional sum of money, did you not?
22	"A Yes, I would have to pay what's known as a
23	penalty.
24	"Q Vig or
25	"A Or, as you would say, vig, yes, to which I

Mr. Cassese --

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MR. PELUSO: May he be allowed to finish?

Cassese - direct

THE WITNESS: A certain party representing the government made promises to me, which he never kept. He was completely a liar, an out and out liar, to me and my wife.

You might feel that I am hostile, and again
I might say that I have a reason to be hostile. If I
am dealing with --

THE COURT: Hostile to the government?

that represent the government. One or two people in particular representing the government promised me and promised my wife that they would not bother me to any great extent because of the fact that I was and still am under the treatment of a doctor, and this happened about two years ago.

My wife and I were discussing it last night, and when I deal with people, especially people representing the government, I feel that these people should be honorable, and if they make a promise, it may not be in black and white, but an oral promise, I feel that as representatives of the government they should be honorable, and they were not honorable, your Honor

I want you to know this.

THE COURT: As you sit here testifying today

and as you sat testifying yesterday, are you influenced
in any degree by a hostility towards the government

lawyers?

THE WITNESS: I have no hostility towards the government. I have a little bit of a grudge because of his dishonorable way of promising my wife that I wouldn't be in any way brought into court because of the fact that I was being treated for a depressed condition of mine.

MR. ABZUG: Your Honor, may I have a side bar, please?

THE COURT: No, you go ahead.

my wife, all he requested was that I go down to his office, and answer a few questions, and that would be the last time that I would be presented to -- I would never be presented to a grand jury or a case.

These are the things that my wife and I -
THE COURT: I want to tell you, sir, and I

want to tell the jury, that you are under subpoena, you

came here under subpoena, didn't you?

THE WITNESS: Right.

THE COURT: And under an oath to tell the truth here.

1 lhjw

THE WITNESS: Right.

THE COURT: And nobody quashed or vacated or set aside that subpoena, and as far as I am concerned, you are here because you have got an obligation to be here and you have got an obligation to tell the truth.

You took an oath to tell the truth, the whole truth and nothing but the truth.

THE WITNESS: That's right, sir.

THE COURT: And you are under a legal subpoena to be here, the government had a right to subpoena you, as far as anything I know on the record, and you started testifying under oath and you took an oath.

THE WITNESS: Right.

THE COURT: I want that understood, and I want the jury to understand that. If there is any hostility or any misunderstanding on your part about your obligation, I want that cleared up right now.

THE WITNESS: The reason why --

THE COURT: I don't want any more discussion from you in response to my statement. I am telling you your obligation.

THE WITNESS: I am meeting my obligation but I want the jury to know that the representative of the

1 | 1hjw 44

Cassese - direct

government is a liar.

THE COURT: Sir, I will hold you in contempt if you speak further, until I permit you. I want you to understand that you are -- I want the jury to understand, as I said, that you are under oath here -- you took an oath and you are here under a legal subpoena, and I want this understood and I want you to confine yourself to answering questions from now on.

I want you to listen to those questions carefully, make complete and truthful answers, and the government can continue its examination in whatever way it feels it ought to.

You can repeat what you have gone over so far, do whatever you feel you should do, Mr. Abzug, and we will continue in an orderly manner.

We will have a break in just a few minutes and we will have no further interruptions now.

Okay, Mr. Abzug.

BY MR. ABZUG:

- Q Whom did you make these ten payments to, sir?
- A Mr. Dinino.
- O Anyone else, sir?
- A Not that I can remember.
 - Q I am showing you what has been marked for

Q

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How did you know him, sir, at the time you

		. 06.1
1	lhjw 46	Cassese - direct
2	were making	the payments?
3	A	Vinny.
4	Q	Is Vinny in the courtroom today?
5	A	Yes, sir.
6	Q	Would you please identify him for the jury?
7	A	Sitting right here with the white shirt and
8	the grey su	it.
9	Q	How many payments did you make to Vinny?
10	Α	How many payments did I make?
11	Q	Yes.
12	A	I might have mad three or four or five, maybe.
13	I couldn't	remember the exact I don't keep records on
14	that.	
15	Q	Why, sir, did you make the payment to Vinny?
16	A	Because I guess John wasn't around.
17	Q	Did you know anything about the relationship
18	between th	ese two gentlemen, anything that Mr. Dinino
19	said?	
20	A	No. I didn't know anything about their
21	personal r	celationship.
22	Q	Speaking now of the relationship with respect
23	to the \$50	00 that you owed to Mr. Dinino. Did Mr. Dinino
24	tell you a	anything about Mr. DeVito?
25	A	That I don't remember, whether he did or

have enough problems without quibbling over precise words.

24

- 2 Q Sir, during the time you were paying back
 3 Vinny, do you recall having a conversation with him about
 4 one of those payments?
 - A Do I recall about a certain payment?
 - Q Did you have a conversation with Mr. DeVito about one of the payments that you were making, that he was collecting for John Dinino?

A That I can't possibly remember that conversation. We always had conversation.

Q Directing your attention, sir, to the late spring or early summer of 1972, do you recall having a conversation with Mr. DeVito about a payment that you owed to Mr. Dinino?

A I don't remember that.

Q Showing you grand jury testimony of March 7, 1975, page 9, beginning on line 12 and extending to line 9 of page 11, I want you to read that to yourself, sir, and tell -- after you read it, tell the jury whether that refreshes your recollection as to whether you had a conversation in the late spring or early summer of '72 with Mr. Dinino about a payment that you owed Mr. DeVito -- with Mr. DeVito about a payment that you owed Mr. Dinino.

(Pause)

Q Does that refresh your recollection, sir?

		" 021
1	lhjw 49	Cassese - direct
2	A	It does, yes.
3	Q	Why don't you tell the jury about that
4	conversation	on. Please, sir, tell the jury about that
5	conversation.	
6	A	Well, it seems that I was slapped in the face
7	by Mr. DeVito.	
8	Q	Where was this, sir?
9	A	In the office where I was working, Carter Cab
10	office.	
11	Q	Do you recall who was there, sir?
12	A	No, I don't.
13	Q	Do you recall whether your glasses fell off
14	your face,	sir, when you were slapped?
15	A	Well, yes, they fell off my face.
16	Q	Why did Mr. DeVito slap you in the face, sir?
17	A	Well, I think the reason why was that I was
18	very offen	sive towards him personally.
19	Q	What did you say to him, sir?
20	A	I said that I thought that I had been paid up.
21	Q	Paid up to who, sir?
22	A	Pardon?
23	Q	Paid up to who, sir?
24	A	Paid up my loan, completely paid off.
25	0	To who?

- 11	V 328		
1	lhjw 50 Cassese - direct		
2	A To whom?		
3	Q To who, yes.		
4	A To John, I believe it was.		
5	Q And Mr. DeVito obviously disagreed with you,		
6	sir, is that correct?		
7	A He did.		
8	Q What happened then when he disagreed? What		
9	did he do?		
10	A His disagreement and my I lost my temper		
11	and I sort of moved towards him and he slapped me in the		
12	face and sent me back.		
13	Q Is that what you told the grand jury, sir,		
14	that you moved towards him?		
15	A Well, I was a little bit out of hand. I		
16	became very abusive.		
17	Q Do you recall telling the grand jury that		
18	you moved towards Mr. DeVito before he slapped you?		
19	Did you tell that to the grand jury?		
20	A I don't remember if I said that to the grand		
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2	read the entire section directly to the jury and avoid		
2	any of this back and forth business. Why don't you just		

Cassese - direct

do that? That is the simplest way to get it out.

MR. ABZUG: Reading from page 9, line 12:

"Q Mr. Cassese, directing your attention to the late spring or early summer of 1972, that's approximately three years ago, and we are talking about approximate times now, I am sure the grand jury understand that.

"Do you recall an incident where this man known to you as Vinny came to Carter Cab where you were employed and to collect one of these payments on behalf of John Dinino?

"A Well, yes. He was there a number of times to collect instead of Vinny coming down.

"Q Right. And directing your attention to the specific time period, do you recall Vinny coming to Carter Cabs and asking you to make this payment to John Dinino and you told Vinny at that time that the loan that you had made for Mr. Dinino had already been complete and that you refused to pay the loan and that Vinny slapped you in the face, knocked your glasses off and told you that you would pay?

"Do you recall that incident?

- "A Well, I -- I recall, it was a misunderstanding.
- "Q Do you recall being slapped?
- "A I do.

		000
1	1hjw 52	Cassese - direct
2	"Q By V	inny?
3	"A I do	
4	"Q And	this was in connection with a loan payment
5	that Mr that	you were to pay to John Dining; right?
6	"A I be	lieve it had something to do with that.
7	"Q Did	you give Vinny the amount of money that
8	you owed John at that time?	
9	"A I di	ld .
10	"Q And	this was in response to the slapping?
11	"A Well	l, I like I say, it was a misunderstanding.
12	I felt that I ha	ad made that payment to John.
13	"Q Rig	ht.
14	"A And	Vinny disagreed with me.
15	"Q And	he slapped you?
16	"A So	I so I without thought said I ain't
17	going to pay.	
18	"Q And	Mr. DeVito known to you as Vinny slapped
19	you in the face	?
20	"A Tha	t might have been the reason why.
21	"Q And	then after that you repaid the loan?
22	"A Yes	•
23	3 "Q Wor	ald you have repaid the loan if Mr if
24	Vinny hadn't s	Lapped you?

I think I would, yes.

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"Q Well, but it was your understanding that -but it was your understanding at that time before Vinny
slapped you you had already repaid the loan?

"A I thought I had made the payments."

Q Do you recall giving that testimony, sir?

THE COURT: He does not deny it. That is the grand jury testimony.

Q Do you recall any other person being present at this incident, sir?

A A couple of guys. There was a few guys there.

I can remember possibly two.

Q What were their names, sir?

A I believe one was Jack Tellian.

Q What did Jack Tellian say, if anything?
Incidentally, what was this payment? How much money
was it, do you recall?

A About \$15.

Q \$15. Do you recall what Mr. Tellian said after Vinny slapped you and knocked your glasses off?

A I have no idea.

MR. PELUSO: Objection to what Mr. Tellian said, Judge.

THE WITNESS: I have no idea. Furthermore -THE COURT: No "furthermore". You do not recall.

	* * * * *
1	lhjw 56 Cassese - cross
2	A Of course.
3	Q Did you know what business he was in other
4	than the activity he had with you?
5	A I did. I did.
6	Q What business was he in?
7	A Gas station. He operated a gas station.
8	Q Did you know where that gas station was?
9	A Well, I was never there, but it was up in
10	Rockland County, I believe. Close to Route 17 and the
11	Thruway.
12	Q You described this incident where you were
13	slapped. As you sit here today, could you tell his Honor
14	and this jury whether or not you would have paid back that
15	money if it was proven that you owed money, whether you
16	were slapped or not?
17	A I would have paid the money because it was
18	my obligation
19	MR. ABZUG: Objection, relevance, your Honor.
20	THE COURT: Overruled. What is your answer?
21	THE WITNESS: I would have paid, according
22	to my agreements.
~	to be a section of your consider that

The face slap?

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1	1hjw 57 Cassese - cross	
2	Q Yes.	
3	A I must have caused t. I don't think Mr.	
4	DeVito would have slapped without reason. I probably	
5	became offensive. I don't remember the exact details.	
6	I probably said something personally, and that was it.	
7	Q Do you have on occasion provoked argument	
8	because you did become offensive?	
9	A Pardon me? I didn't catch the question.	
10	Q Did you on occasion provoke argument because	
11	you do become offensive, on occasion?	
12	A I am quick tempered. Very quick tempered.	
13	MR. BLOUSTEIN: I have nothing further.	
14	THE COURT: Mr. Peluso?	
15	CROSS EXAMINATION	
16	BY MP. PELUSO:	
17	Q Mr. Cassese, can you tell us when you became	
18	i117	
19	A When I became ill?	
20	Q Yes.	
21	A At the age of 15.	
22	Q You said you were under some care and receiving	
23	medication during this period of time.	

Were you receiving treatment at the Riverdale

I am still receiving medication.

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- Mental Health Care Center?
 - A That's right.
 - Q Were you under the care of a Dr. Nikonerow?
 - A I still am.
- Q When did you become under Dr. Nikonerow's care?

THE COURT: The name of the center?

MR. PELUSO: Riverdale Mental Health Care.

THE COURT: What is your question?

- Q When did you first come under Dr. Nikonerow's care at the Riverdale Mental Health Center?
- A The exact date I don't think I can remember, but I believe January, about three years ago.
 - Q That would be about '72?
- A Might be late '72 or early '73. Could be January, 1973.
- Q Were you called into the U.S. Attorney's office sometime after you were under the care at the Riverdale Health Care Center?
 - A I believe I was.
- Q Was this during a period of time that you were still being treated for your condition?
 - A I'd say yes.
 - Q Can you tell us in general laymen's terms

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1	1hjw 59 Cassese - cross i. 337	
2	what you were being treated for?	
3	A Severe case of depression.	
4	Q Would it be what we would call a nervous	
5	ceakdown?	
6	A That's right.	
7	Q Can you tell us how long you were at the	
8	Riverdale Mental Health Care, sir?	
9	A About three years.	
10	Q During this entire period of time you were	
11	receiving treatment by Dr. Nikonerow and you were under	
12	medication?	
13	A I was, and still am.	
14	Q And when you appeared in the U.S. A torney's	
15	office you were under treatment by Dr. Nikonerow?	
16	A I was.	
17	, Q And under medication?	
18	A I was.	
19	Q And was this fact made known to the U.S.	
20	Attorney's office?	
21	A My wife made it	
22	MR. ABZUG: Objection.	
23	THE COURT: Overruled.	

person was, that I was being treated for a mental disorder.

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(Continuing) My wife spoke to whoever the

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Q When you appeared before the grand jury in March of '75, did you appear with your doctor?

- A I did not.
- Q Did you appear with an attorney? THE COURT: I am sorry, you did not? THE WITNESS: I did not.
- A I did not.
- Q Were you advised that you had a right to bring an attorney with you who could wait outside and consult with you?

MR. ABZUG: Objection.

THE COURT: That is relevant if it should have been done. I don't know if it should have been done or not. So I don't know whether the question has any meaning.

MR. PELUSO: My question is whether or not he was advised.

was supposed to be advised, are you? I want to make that clear to the jury.

MR. PELUSO: I am contending that the other witnesses who were called were so advised, that they had a right to have an attorney wait outside.

MR. ABZUG: Objection to that remark and ask --

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THE COURT: I will allow it as a question of fact but until there is further proof, I don't want the jury to infer that the gover-ment had the obligation to tell the man.

I don't know whether they did or did not, so we will just take it one step at a time.

But you were not as a matter of fact so advised, is that right?

THE WITNESS: I don't believe I was, your Honor.

Q As you testify here today, sir, looking back in retrospect, on the day that you appeared before the grand jury in March of 1975, do you feel that at that time you were in a proper state of mind to answer questions that being put to you by the U.S. Attorney's office?

MR. ABZUG: Objection, your Honor.

THE COURT: I think I will sustain that as to form. You can go into the subject, but that is too conclusory.

Q Do you feel, sir, that some of the answers that were elicited from you before the grand jury were pressured from you?

THE COURT: Wait a minute. You are entitled,
Mr. Peluso, to go into any facts that hear on the credibility

of his testimony here or his testimony before the grand jury, but his feeling in a kind of general way, I do not think that is going to help us very much.

MR. PELUSO: I will withdraw that question, Judge.

Q The answers that you gave before the grand jury, were those answers that you felt that the U.S.

Attorney wanted you to make in response to his questions?

MR. ABZUG: Objection.

THE COURT: It is time for a recess. If the jury would withdraw, I will talk to you.

(Jury not present)

MR. ABZUG: Your Honor, may I say something?

THE COURT: No, basically what is in the record from this witness is adopted by him in court.

There were a couple of pages, two or three pages read about the slapping incident, but I do not think it varies terribly from what he said in court.

more favorable to the defense, although that is not for me to decide.

So I just start with that point. He has certainly admitted to the slapping incident here in court. He had adopted that much. In other words, he has adopted

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Cassese - cross

the main features here and now of what he said before the grand jury.

I think that you are entitled, however, to develop any facts that would bear upon the credibility of what he said in the grand jury which was read or the credibility of what he says in court.

The relevant factors would be whether he was or is testifying because he was or is under pressure or simply trying to please the person questioning him. That is all relevant. But it is a little delicate, and he might be trying to please you now also.

How does one decide that? I do not know.

MR. PELUSO: The only point I am trying to make, Judge, is this man's mental condition at this time and at the time he appeared before the grand jury, I respectfully submit to the Court -- I take this in conjunction with the motion that we earlier made, that his grandjury testimony not be read because we could not properly cross examine this man.

now that I am perfectly convinced this man now has ample mental faculties and mental ability to testify on direct and be cross examined. He has indicated that he understands what is going on, he acts alert, he responds

in every way in an in alligent, normal manner.

I am re-enforced in what I felt last night,
that the man has problems about his credibility. His
outburst this morning about hostility is in itself
relevant, and I think it was perfectly appropriate for
the jury to hear that, and in fact necessary, because he
obviously has -- the jury could conclude that his performance
here up to that point was seriously affected by a feeling
of hostility towards the government lawyers which caused
him perhaps to violate his oath as a witness.

That is the kind of problem we have with this witness. We do not at least at this point have a problem, a mental problem, of any degree which renders him incompetent to testify.

As far as the grand jury, I was not present at the grand jury nor observing him, but this testimony sounds before the grand jury of the same qualify as it appears here, as far as his mental ability. He had made no statement that he was under any more severe problem nine months ago before the grand jury than he is today, so I do not find his grand jury testimony in any way incompetent.

I think he remembers it, I think he can be cross examined about it and cross examined about his

testimony here.

The question is how do you go about developing what you are entitled to developing about factors which would go to the weight of that testimony, the grand jury testimony that was read and his testimony here.

What do you plan, can you just -- I just want to feel our way carefully on that.

MR. PELUSO: In reading the grand jury minutes,

Judge, I get the impression, and I feel I am correct,

that many of the answers that were elicited from the

witness were in fact suggested and put into his mouth.

THE COURT: There was a long question at, I guess, about page 9 or 10 about the beating, and that was a question -- the description was phrased by the government lawyer and he admitted to it.

This man basically is a hostile witness to

the government, there is no question about it, and leading
him I think was permissible and I think it is basically
permissible here.

But the government lawyer in the grand jury kept going over and over the thing, probably more than he needed to, but he went over and over the situation, and there wasn't any question that the man was admitting, at least certainly the grand jury could find and this jury

could find, he was admitting of his own memory the slapping incident.

He had admitted it here.

MR. PELUSO: Judge, I feel the man admitted the slapping, but I feel that he was attempting to testify that he was slapped because of a remark he made and he provoked it and it had nothing to do --

THE COURT: He said it, and that is before the jury. He has explained that.

MR. PELUSO: The way the questions were read from the grand jury minutes, I think the jury would get the impression that today he is saying something different from what he said on the prior occasion, and on the prior occasion he said he got slapped in order to force him to pay back the money.

of argument. Basically it is a matter of argument.

You have the grand jury testimony in. When you get up
to sum up before the jury, you will be able to argue from
that transcript whatever you can fairly argue. You can
argue that he was led, you know, that is fair argument.

I might disagree and the jury might disagree, but that is your argument. You can take that, analyze that from beginning to end. You have got it down in black

2 and white.

MR. ABZUG: Your Honor, while they are conferring, I realize your Honor is trying to expedite this process, but I just want to make one very short statement for the record.

THE COURT: Let's wait until they are finished so they can hear.

(Pause)

MR. WALLACH: Your Honor, can I just supplement what he said? I am not going to repeat it.

In regard to this witness over here, by him making known his grievance towards the government, it puts us in a very peculiar position, because there is an inference from that, and it is not a question of arguing before the grand jury, that what he told the grand jury was perfectly plausible and truthful and the only reason he told them that is so he would not have to come to court to testify.

The question arises cross examining this witness not as to what he said up here but what he said before the grand jury, and I submit to your Honor one or two theories in regard to that.

While Section 801D(1A), is the area your Honor charted out for this type of testimony, the question

remains that if he said nothing before the jury in the presence of the jury, and the U.S. Attorney sums up the grand jury testimony, these men may be convicted solely on what this witness said before the grand jury. I don't think Congress had that --

THE COURT: I am not even with you. I do not comprehend that at all.

MR. WALLACH: Assuming that the jury does not rely upon this man's testimony given in this court ofhis prior statements to the grand jury, then they may convict the defendants solely on what was brought out on direct examination as to what he said before the grand jury.

There is a question of whether Section 801D(1A) covers that situation.

Number two, we should therefore be allowed to question him in regard to the entire totality of the circumstances that were attendant when he testified before the grand jury, namely whether --

THE COURT: I am not cutting you off. What we recessed on is a question which was a very conclusory kind of question or calling for a conclusion, did you feel that your answers before the grand jury were designed to please the government, that kind of thing.

I was uncertain about whether that kind of conclusory statement was really very helpful and that would be a very good way to approach it.

You can ask him from A to Z about the circumstances leading to his appearance before the grand jury, and that is really the intent of the rule you just referred to.

In fact, I think I would request, just in general, I think it would be better to draw out any facts, you are doing that, basically, you have asked him whether an attorney was there, a doctor was there, get all of the circumstances, you can ask about leading up to this, which would be evidence as to the background, and I think that is a little better than just kind of a blanket question, did he -- how does he view his testimony before the grand jury.

Let's pursue it that way and we will all recess for a few minutes.

Do you have anything more?

MR. ABZUG: Yes, I do, your Honor. I appreciate your Honor's concern, and I agree with your Honor that perhaps the line of questioning is relevant in this case.

The only problem that I have is I was the

government attorney in the grand jury. The witness made a rather vituperative attack on my credibility in the presence of the jury which unfortunately I am not going to be able to go into because I can't interject my own credibility into this trial.

That puts me at a significant disadvantage, but there is nothing really that can be done about it because I am the government attorney here.

I did tell Mrs. Cassese when her husband came
down prior to the grand jury -- prior to her husband's grand
jury testimony --

exactly what I feel is the posture of the case right now. This man came to court pursuant to subpoena and took an oath. There was no motion to quash the subpoena, no motion to say that it violated any agreement.

when a man gets on the tand and takes an oath, he is obligated to tell the truth. If he does not because of any feeling of hostility, he is violating his oath, and I think he took that seriously and I think that it helped him realize that after he got that admonition.

I am not going to go back into -- I am not going to go back and try the case of Mr. Cassese against you. It has to be gone into further, but I do not think --

Cassese - cross

MR. ABZUG: I just hope, your Honor, that that is on the record, not having been given -THE COURT: I do not hold it against you in

any way. Let's take a break.

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MR. PELUSO: May we, before your Honor leaves, we would like to make an application cutside the jury's presence, and that is for the withdrawal of a juror in view of what took place in the courtroom this morning.

THE COURT: That is denied. Motion denied.

(Recess)

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(In open court - jury present)

THE COURT: You were going to conting, Mr.

Peluso.

CONTINUED CROSS EXAMINATION

BY MR. PELUSO:

Q Mr. Cassese, there came a time at one period of time when you were interviewed by an agent or two agents, is that right? Federal agents?

A I believe I was.

Q Do you recall when that conversation or discussion took place between you and the agents?

A Not exactly. I might say about two years ago.

Q Let me ask you this: Did you have more than one discussion with the agents or members of the United States Attorney's office?

A I believe it was one on each occasion.

Q Did you have a discussion with the United States Attorney and/or federal agents before you went into the grand jury to testify?

A I did.

MR. ABZUG: Objection as to form, your Honor.

THE COURT: Why don't you take it one at a

time. I will sustain the objection as to form.

1	1hjw 73 Cassese - cross
2	Q Prior to going into the grand jury to testify,
3	did you speak with Mr. Abzug?
4	A I don't think it was Mr. Abzug.
5	Q Did you speak to Mr. Padgett?
6	A I believe that was the name of the person.
7	Padgett.
8	Q He was an assistant United States attorney?
9	A I believe so.
10	Q Did you also speak with one or two federal
11	agents?
12	A I did.
13	Q During the course of the discussions, did you
14	make it known to them that you at no time felt that you
15	were the victim of an extortion by Mr. Dinino or Mr.
16	DeVito?
17	A I definitely did.
18	Q Did you explain to them the circumstances
19	surrounding the loan transactions between you and Mr.
20	Dinino and Mr. DeVito?
21	A I believe I did.
22	Q Did you tell the agents that you considered
23	these transactions to be helpful to you?
24	A I expressed that. I did.
25	Q When you told that to the agents, were those

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answers truthful?

A Yes, they were.

Q Did you tell the agents and/or one of the assistants -- I will take it piecemeal. Withdrawn.

Did you tell the agents that you were never threatened in order to pay back money?

- A I was never threatened, never.
- Q Did you tell this to the agents?
- A I believe I brought it up.
- Q Did you tell this to the assistant United States attorney?
 - A I think I did, yes.
- Q Were those answers truthful when you told those answers to the agents and the assistant United States attorney?
 - A They were true.
- Q Did you at any time during the period that you were making these loans and repaying money, did you feel that you were being coerced, threatened?
- A I never felt coerced, never felt threatened.

 I borrowed voluntarily, my own free volition.
- Q Did you tell the agents that you spoke to that you resorted to this means of obtaining money because you could not go to banks or any other lending

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SOUART NEW YORK, N.Y. 29(10.5)

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2 institutions?

MR. ABZUG: Your Honor, I believe this is what he testified to on direct.

THE COURT: There is no question about this.

I think we are getting quite repetitious.

MR. PELUSO: I am saying, Judge, did he before, sometime in the past, before he went to the grand jury, tell this to the agents.

THE COURT: There is no question that he came to these people because he couldn't get loans from banks. I assume he said it whenever he was asked about it. That isn't the issue.

Q When you testified before the grand jury, were you able to make known to the grand jury the entire truth concerning your transactions with Mr. Dinino and Mr. DeVito?

MR. ABZUG: Objection.

THE COURT: I will sustain that objection.

Q Did the U.S. attorney who questions you before the grand jury ask you questions concerning all the information you had told him about your transactions with Mr. Dinino and Mr. DeVito?

MR. ABZUG: Objection. Same reason.

THE COURT: Sustained. That is not the

point. The point is the accuracy, truthfulness of what he did say before the grand jury, which was read in court.

This jury is not trying the validity of the grand jury's action. They have been specifically told that they should not and they are not trying whether there was a complete flushing out of everything. That is the purpose of this trial.

The only focus is on the credibility of what he said which was read to this jury. So let's limit it to that, please.

Q At the time that your glasses were knocked off and you were slapped, I am asking you about your state of mind at that time, sir. Did you feel that that slap was provoked by you or did you feel that that slap was to induce and force you to make a payment?

MR. AB?UG: Objection as to the form, your Honor, and as to relevance.

THE COURT: No, it is certainly relevant. Why don't you take it one step at a time?

- Q At the time that you were slapped and your glasses fell from your face, did you feel that that slap was provoked by something you did and said?
 - A I am certain it was.
 - Is that answer truthful?

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A That's the truth, yes. I provoked it.

Q Did you feel that that slap was in order to put fear into you to make a payment?

A No, that was not the reason.

O Is that answer truthful?

A Pardon?

Q Is that answer trithful?

A Definitely. I never had no fear.

Q Did you not tell the agents who spoke to you that you never had any fear of Mr. DeVito or Mr. Dinino?

MR. ABZUG: Objection, same reason, your

Honor. We have been over this. This is his testimony

on direct. I don't see what relevance it has what he told

the agents two years ago, three years ago or a few minutes

ago.

THE COURT: Overruled.

Q Did you not tell that to the agents?

A Well, if the question concerning whether there was any fear on my part was asked --

THE COURT: Do you remember what you told the agents or don't you on that point? Don't you remember?

THE WITNESS: May I have the question

repeated?

MR. PELUSO: I will withdraw the question, to

2 save time.

Q Did you in response to a question put to you before the grand jury by Mr. Abzug state, "I wouldn't borrow from these people if [felt they would use force to collect"?

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A Well, that's the way I felt.

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MR. ABZUG: Objection, your Honor.

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THE COURT: Overruled. I don't think there

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is really a question about the fact that this was a grand

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jury testimony. If I am mistaken, correct me.

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The authenticity and accuracy of the transcript

MR. PELUSO: I have it here, Judge.

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we apparently concede, right?

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THE COURT: All right, you can just read that

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question and answer. Do you want to read that?

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MR. PELUSO: We would have to start on page

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12 and go on to page 13 of the grand jury testimony.

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THE COURT: All right, you follow that, Mr.

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Abzug.

having made --

reasonably related.

21 22 Q Do you remember being asked this question and

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THE COURT: Look, we don't need that. The

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government has read and you can read, as long as it is

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MR. ABZUG: Your Honor, may I have a side bar with respect to this, please?

THE COURT: Just show me what you are going to read. I think we don't need a side bar.

MR. PELUSO: Starting right at line 22 and going over to the next page.

THE COURT: How far on the next page?

MR. PELUSO: It is just a matter of a few lines, Judge.

(Pause)

THE COURT: Okay, I will allow that. You just read that.

MR. PELUSO: "C: But it was your understanding at the time that you were borrowing money from Mr. Dinino that he was a loanshark and that loansharks commonly collect unpaid debts by threats?

"A By force?

"Q By threats and force.

"A Well, if that was so, I wouldn't borrow from these people."

Q Do you remember those questions? Did you make that answer?

A I don't remember it exactly.

THE COURT: Look, I told you, you have a right

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to read it. There is no question this is the transcript. You read it. Do you have any other questions?

MR. PELUSO: I have two more lines to read.

"Q Is that your understanding or not?

"A That is right. I wouldn't borrow from these people if I felt they would use force to collect."

THE COURT: Anything else?

MR. PELUSO: Page 15.

"Q Mr. Cassese, in connection with any of the loans that you have testified that you received from Mr. Dinino, did Mr. Dinino or Vinny DeVito ever threaten any of your family in an effort to get you to repay any of these loans?

"A That's what I have been trying to tell you,
Mr. Abzug. I have never been threatened, nor anyone in
my family has been threatened. I will tell you why, I
make my payments when they are due."

THE WITNESS: That's true. It's true.

THE COURT: You read the testimony. Anything

else?

MR. PELUSO: "Vinny never directed any threats towards your wife, for example?

"A No, sir.

"O Not towards you?

THE COURT: Sustained.

Cassese - cross

Therefore, I respectfully move to admit the entire transcript. They is see what the man testified to and any exculpatory things that defense counsel might want to bring out -- it has been chopped up. Part of it were read and parts haven't.

I think the jury now is under the erroneous impression that perhaps the government wasn't reading to Mr. Cassese certain portions relating to the slapping incident. That isn't so.

Mr. Cassese on redirect, which is what I would propose to do, your Honor, I would just move to admit it into evidence.

THE COURT: I think it is a pretty good idea, frankly, it is a matter of clarity. If there is a particular point in here that is prejudicial, you point that out to me.

I think the way the examination of this witness shaped up, the grand jury testimony was essential and important in the examination of this man. Large portions were read. I think it would just be clearer ultimately if the jury had this. He can read it all.

Is there any difference in form?

MR. WALLACH: Judge, putting in all the grand

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jury minutes in evidence means they could actually read that entire grand jury testimony and that can be the sole testimony that convicts --

THE COURT: Look, we have been over this

point again and again. I interpret that rule of the New

Rules of Evidence to permit introduction into evidence --

MR. WALLACH: I have the New Rules of
Evidence here, Judge. It doesn't say that. You can use
my copy, Judge. I have it here.

THE CCURT: I have held and I hold again that this is not barred by the hearsay rule. The statement covers an oral or written assertion. Let's not go over old ground.

Is there any difference that you want to make to the form, reading versus admitting the document?

I want to know the answer to my last question.

Is there any difference as to the form?

Do you object to having it in in its transcript form?

MR. PELUSO: Judge, I would say this. If there were questions asked, the questions would be used either to refresh the witness' recollection or where there has been an inconsistency. We are not doing that here, Judge.

THE COURT: We are long past what you are

talking about.

MR. PELUSO: So I see no purpose at this time, Judge, just to throw the whole thing in. It serves only one purpose.

THE COURT: You are not answering my question.

I have held that the grand jury testimony of the witness is not hearsay and I have ruled on Rule 801D(1). This means that the government or you can read any part which is relevant and not excluded by some other rule.

Substantial amounts have been read by the government, substantial amounts or parts of it have been read by you.

Now, the government would propose for the purposes of clarity to read the whole thing. The government offers as an alternative to save time to simply introduce the 'rarscript.

I asked you one narrow question, do you -assuming that the government would stand here and read
the testimony, do you object to having it going in in
written form to save us time?

Do you have that objection?

MR. PELUSO: I would, Judge.

THE COURT: All right, he can stand there and read it.

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MR. WALLACH: Then we are going to have to cross examine the witness as to the other matters -
THE COURT: You do what you wish to do.

Read it.

(In open court)

jury testimony of Mr. Cassese is rear brief. Certain portions of it were read by the government lawyer, one or two other portions were read by the defense counsel.

The government suggests that for the sake of clarity you should have the entire testimony before you, and I am going to permit that to be done.

So you just read it. It won'take long. Read the whole testimony.

MR. ABZUG: This is the grand jury testimony of Philip Cassese given on March 7, 1975 at 11:05 a.m. It reads as follows:

"Phillip Cassese, called as a witness by the grand jury"--

MR. PELUSO: Judge, if we are going to read it, he should read the whole thing.

MR. ABZUG: I am reading the whole thing, your Honor.

MR. PELUSO: Testified as follows, then we

have examination by Mr. Abzug --

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your Honor.

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MR. ABZUG: I haven't reached that point,

THE COURT: He is going to read the whole thing. Go ahead.

MR. ABZUG: "Phillip Cassese, called as a witness by the grand jury, being first duly sworn by the foreman, testified as follows:

"EXAMINATION BY MR. ABZUG:

State and spell your name, please.

Phillip Cassese, C-a-s-s-e-s-e.

"Q Mr. Cassese, my name is Michael B. Abzug. I'm a Special Attorney for the Department of Justice. This grand jury has been convened and you have been subpoensed before it to give testimony with respect to certain violations of federal law. Specifically, those code provisions dealing with extortionate credit transactions which is commonly known as loansharking.

"Mr. Cassese, in approximately one year ago do you recall having a meeting with Special Attorney Charles Padgett at 26 Federal Plaza?

"A Yes, I do.

And do you recall who was present at that interview besides yourself and Mr. Padgett?

other	"A	Yes.	Му	rife	and		I	don't	remember	the
	man's	name.								
	"Q	There	was	ano	ther	mar	1	present	t?	

"A I think so. I think there was another man present, yes.

"Q Do you recall what his name was?

"A No, I don't, sir.

"O Do you recall whether he was an agent of the FBI?

"A I believe he was an agent of the FBI.

"Q And could you please describe to the grand jury what the substance of this meeting was, what conversations transpired between you and Mr. Padgett?

"A Well, it was sort of a questioning, as to whether I had any association with certain people.

"Q By certain people are you referring to a man by the name of John Dinino and Vincent DeVito?

"A Yes, sir.

"Q Do you recall telling Mr. Padgett at that that you met Mr. Dinino in 1970 through a man by the name of Sam Hilton at Al's Taxi?

"A I do.

"Q And do you further recall telling Mr. Padgett that you obtained approximately 15 loans from Mr. Dinino

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between the time of 1970 and 1973?

"A May I ask a question?

"O Well, answer my question firm.

"A Well, I have to ask you a question.

"O What's your question?

"A This information, this question which you ask me, is it -- is it that I have already answered that question to this Mr. Padgett a year ago?

"Q Yes, I'm asking you whether you recall telling Mr. Padgett these things.

"A Well, I don't recall word for word, I mean.

"Q But do you recall generally telling him that you obtained certain loans from Mr. Dinino between the periods --

"A If my testimony or my answer to these questions at the time when I was interviewed by Mr. Padgett, if it states that I did, then I must have.

of paper. I'm asking you what it states on a piece of paper. I'm asking you what your recollection is now. I'm asking you whether now today you have a recollection of telling Mr. Padgett that you obtained loans from Mr. Dinino.

"A Well, like I say, if the question was asked and I replied yes it must be so.

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"Q I'm not asking you that. I'm going to ask
you again. Do you recall telling Mr. Padgett that you -"A Not word for word, sir.

"Q Do you recall in a general manner telling Mr. Padgett that you obtained loans from Mr. Dinino? I'm not asking you to repeat what your conversation with Mr. Padgett was word for word. I'm asking you whether you recall as a general matter discussing Mr. Dinino and the fact that you had obtained loans from Mr. Dinino. Do you recall that?

"A I would say yes.

"Q And do you recall telling him that these loans varied in amounts from approximately \$50 to \$150, do you recall telling Mr. Padgett that?

"A I would say yes, with one condition.

"Q What is that condition, sir?

"A That whatever money I borrowed from this socalled John was upon my request. In other words, I needed the money and I borrowed it.

Faugett that these loans were borrowed, on what's commonly known as a 6 for 5 basis, in other words, if you borrowed \$5 from Mr. Dinino, you would obtain -- you would have to pay back \$6?

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borrowed, and whatever I agreed to pay, was strictly on my own free volition.

"Q Yes, I'm not asking you whether you voluntarily gave the money, excuse me, borrowed the money --

"A If I borrowed, I borrowed voluntarily. I wasn't forced to borrow.

"Q I understand that. But as a condition of these loans that you borrowed from Mr. Dinino, do you recall agreeing that for every \$5 you borrowed you would have to pay back 6?

"A Whatever the agreement was between me and the so-called John, was not forced on me. That's what I'm trying to say.

"Q I ask you again. Now listen to me carefully.

I'm asking you whether as a condition of these agreements,

I understand that this is a voluntary agreement, but as
a condition of these agreements did you agree to pay Mr.

Dinino \$6 back for every \$5 that you borrowed?

"A I did. Voluntarily. Wasn't forced upon me.

I couldn't borrow from a bank. I had -- my credit wasn't
good. I needed the money.

"Q Just respond to my questions, please. Okay.

In the event -- well, strike that.

"As a further condition of these loans, you were to repay Mr. Dinino a certain amount of money every week, were you not?

"A Yes, upon failure to make payments as agreed, each week.

"Q Well, I'm not talking about if you missed the payments. I'm asking you now whether as a condition of these loans you had to make weekly payments back to Mr. Dinino.

"A Yes.

"Q And if you missed one of these payments you had to pay an additional sum of money, did you not?

"A Yes. I would have to pay, what's known as a penalty.

"Q Vig?

"A Or as you would say, vig, yes. To which I also agreed.

"Q I understand that. This penalty didn't reduce the principal of the loan if you -- is that correct?

"A That's right.

"Q So in other words, if you borrowed \$50 from Mr. Dinino on the agreement that you would make weekly payments of a certain amount and you missed one of those payments you would have to pay Mr. Dinino, for example,

1	1hjw 93 Cassese - cross
2	\$3 of vig and that would reduce the principal of the \$50
3	loan, would it not?
4	"A It would not reduce the principal.
5	"Q Thank you.
6	"And you made these payments back to Mr. Dinino,
7	is that correct?
8	"A I did.
9	"Q In addition to making payments back to Mr.
10	Dinino, did you make payments back to a man known to
11	you as Vinny DeVito?
12	"A I did.
13	"Q Was he known to you as Vinny DeVito?
14	"A Just as Vinny.
15	"Q And approximately what periods did these
16	loans occur over, a period of approximately three years
17	between 1970 and 1973?
18	"A I would say about three years.
19	"Q And do you know what the relationship was
20	between this man known to you as Vinny and Mr. Dinino,
21	were they partners, for example?
22	"A That I don't know.
23	"Q Well, was it your impression that Vinny was
24	a friend of Mr. Dinino's?
25	"A Oh, yes. They were they knew each other.

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They were friendly.

"Q You saw them together?

"A No, I never saw them together. I either seen one or the other.

"Q How did you know they were friendly?

"A Well, the fact that I believe John -- I believe John told me that Vinny would be coming around for the collections.

"Q In other words, John told you that in the event he wasn't there to make the payment you should make the payment to Vinny?

"A That's right.

"Q Now, Mr. Cassese, directing your attention to the late spring or early summer of 1972, that's approximately three years ago and we are talking about approximate times now. I'm sure the grand jury understands that.

"Do you recall an incident where this man known to you as Vinny came to Carter Cabs where you were employed and to collect one of these payments on behalf of John Dining?

"A Well, yes, he was there a number of times to collect instead of Vinny coming there.

"Q Right. And directing your attention to the specific time period, do you recall Vinny coming to Carter

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Cabs and asking you to make this payment to John Dinino and you told Vinny at that time that the loan that you had made for Mr. Dinino had already been complete and that you refused to pay the loan and that Vinny slapped you in the face, knocked off your glasses and told you that you would pay? Do you recall that incident? Well, I -- I recall. It was a misunderstanding. "A 8 9

- Do you recall being slapped? "0
- I do. " A
- By Vinny? "0
- I do. " A
- And this was in connection with a loan payment "0 that Mr. -- that you were to pay to John Dinino, right?
 - I believe it had something to do with that.
- Did you give Vinny the amount of money that you owed John at that time?
 - I did. " A
 - And this is in response to the slapping? "0
- Well, I -- like I say, it was a misunderstand-I felt that I had made that payment to John. ing.
 - Right. "0
 - And Vinny disagreed with me. "A
 - And he slapped you? "0
 - So I -- so I, without thought, said I ain't "A

Cassese - cross

going to pay it.

1hjw 96

"Q And Mr. DeVito, known to you as Vinny slapped you in the face?

"A That might have been the reason why.

"Q And then after that you repaid the loan?

"A Yes.

"Q Would you have repaid the loan if Mr. -- if Vinny hadn't slapped you?

"A I think I would, yes.

"Q Well, but it was your understanding at that time before Vinny slapped you that you had already repaid the loan?

"A I thought I had made the payments.

"Q So Vinny -- if Vinny had never slapped you, you never would have repaid the loan, correct?

"A I can't say exactly on that question. I can't say yes or no. It might have been that I -- that I couldn't remember as to whether I had made that payment or whether I was confused as to having made the payment which brought up this misunderstanding between Vinny and I.

"Q But in any event, after he slapped you, that refreshed your recollection, so to speak, and you repaid the loan?

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1	1hjw 97 Cassese - cross
2	"A I did, yes. I did repay the loan.
3	"Q Did you know at the time you were taking
4	loans out from Mr. Dinino that he is what is commonly
5	known at a loanshark?
6	"A Yes, I was aware of that.
7	"Q And what does the term loanshark mean to
8	you?
9	"A Loanshark to me is going to a person and
0	borrowing money.
11	"Q What happens if you don't repay a loanshark?
12	"A What happens?
13	"Q What happens?
14	"A Well, as far as I know there's been a lot of
15	talk about threats and so forth and so on, which I
16	never come up against.
17	"Q Except for this one slapping incident?
18	"A Yes.
19	"Q But it was your understanding at the time
20	that you were borrowing money from Mr. Dinino that he wa
21	a loanshark and that loansharks commonly collect unpaid
22	debts by threats?
23	"A By force.
24	"Q By threats and force?"

"A Well, if that was so, I wouldn't borrow from

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these people.

"A From experience.

No, I don't --

"Q Is that your understanding or not?

"A That is right. I wouldn't borrow from these people if I felt they would use force to collect.

"Q Yes, but it was your understanding, was it not, that loansharks commonly collect unpaid loans by force and threats of force?

"A Well, I might say that is a storybook tale, or also motion picture tales. In real life I have never heard of any such thing happening during the number of years in which I borrowed money from these so-called shylocks.

"Q This is just something that you have -- that you think is a myth?

"A Well, it could be true, but I have never actually witnessed such an incident. As to what -- I mean -- and I don't believe that there is an awful lot of truth in that particular, as you say, statement or idea.

"O Well --

"0

"A You see, if you want me to explain how they operate today, I can explain to you.

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1	1hjw 99 Cassese - cross
2	"Q What I want to ask you is whether the slapping
3	incident that you testified to before this grand jury
4	changed your opinion of loansharks.
5	"A No, it didn't.
6	"Q It did not?
7	"A No. The slapping was a misunderstanding. I
8	might have said something to infuriate this particular
9	person, sort of a personal offensive remark.
10	"Q Vell, you didn't did that in fact occur?
11	"A I did, yes. I personally offended him.
12	"Q By telling him that you, that
	"A That I wouldn't pay him.
13	"Q That you already paid the loan and you
14	wouldn't pay?
15	T personally
16	
17	offended the man. I was never threatened.
18	"Mr. Abzug; Mr. Foreman, would you please
19	temporarily excuse the witness?
20	"The Foreman: You are excused temporarily.
21	"The Witness; Wait outside?
22	"The Foreman: Yes.
23	"(Witness excused)
24	"(Witness recalled)
25	"The Foreman: You are still under cath,

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Mr. Cassese.

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"O Mr. Cassese, in connection with any of the loans that you testified that you received from Mr. Dinino, did Mr. Dinino or Vinny DeVito ever threaten any of your family in an effort to get you to repay any of these loans?

"A That's what I've been trying to tell you, Mr.

Abzug. I've never been threatened. Nor anyone in my

family has been threatened. I'll tell you why. I made

my payments when they were due.

"Q Vinny never directed any threats towards your wife, for example?

"A No, sir.

"O Not towards you?

"A Truthfully, never.

"Q Do you have any children?

"A Two daughters.

"Q Never threatened any of your daughters?

"A Never, sir. Never. That's the truth.

"Mr. Abzug: Thank you.

"Would you permanently excuse the witness?

"The Foreman: You are permanently excused.

You are excused.

"(Witness excused)."

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jury, were you aware of the fact that those proceedings were secret?

A Yes, sir.

- Q And you were aware of the fact that there would be no way that your wife could know what you told the grand jury?
 - A Unless I told her.
 - O That's right.

MR. PELUSO: I have no further questions.

THE COURT: You may step down.

(Witness excused)

MR. ABZUG: The government rests, your Honor.

THE COURT: We will take a brief recess.

If the jury would retire, I will speak to counsel for a moment.

(Jury not present)

at least yesterday at which time I questioned the government about the sufficiency of its case to go to the jury, and of course I think the last question -- the last discussion of that was at the ery end of the day yesterday before we had heard this morning's evidence and the evidence this afternoon.

As long as I took the initiative of raising

1 | lhjw 143

the point, I guess I am taking the initiative of raising the point now.

I assume that there will be motions, and I want to tell you that in the meantime I have gone over my notes quite carefully and I think that the government is correct that they have enough of a case to go to the jury.

I think that some of the evidence that came in this morning considerably improved the government's case and indeed in going over my notes of even yesterday's testimony, it seems that the government is correct, that viewing the evidence as a whole, this is a jury question and not something that the Court can dismiss.

I just want to lead off with that, since I kind of took the lead yesterday. Anyway, I assume that there will be motions now for the record, and I am certainly happy to hear them.

MR. BLOUSTEIN: Yes. If your Honor please, on behalf of the defendant John Dinino, I respectfully move for the indictment to be dismissed on the grounds that the government has failed to make out a prima facie case.

THE COURT: Is there a motion -
MR. WALLACH: We move under Rule 29 for a

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a judgment of acquittal, your Honor. Most of the evidence over here -- firstly, I'd like to respectfully draw your Honor's attention to a rule in federal practice that criminal statutes to be strictly interpreted --

THE COURT: I have given this matter really quite intense consideration, and I to not want to cut you off unduly, but I think we would spend our time best without having a fully developed argument. I do not see that it will help.

We have gone over the issues heretofore. I want to say this: The count that I am now most in doubt about is Count 3 as to Ronson.

I think on every other substantive count there is enough to go to the jury on the issue of express or implied threats of the use of violence. I would submit each of those counts, namely, 2, 4, 5, 6 and 7, to the jury on that.

I will say now that I will not charge on this statutory language, other criminal means. It has no meaning in this case and it is not defined, there is no suggested definition in the government's proposed charge, and I do not really think that is what the government contends.

I do not think we are dealing with some vague, undefined other criminal means

But we come to Count 3 about Ronson, and I do not see anything there involving an express or implied threat of violence or harm to the person, which is what we would talk about in the other counts.

I think what you are going on with Ronson is the express or implied threat of harm to reputation.

MR. ABZUG: That is correct, your Honor.

THE COURT: In your memo which you gave me, you did not cite any cases, and I suppose you do not have them.

This question of whether there could be a threat to reputation by virtue of what you would argue to be a threat to keep calling the wife, by the time that was done, the wife had been told by Mr. Ronson about his relationship with Dinino.

So what is the significance of the implication that if the jury accepts it, the implication or expression that Dinino would keep calling or might keep calling the wife? Does reputation mean what your wife thinks of you?

All thosequestions, I think that is a little thin.

MR. ABZUG: May I just make the following argument and then I will submit it naturally to your Honor's discretion.

The government's argument with respect to

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(In open court - jury present)

THE COURT: The government has rested. The defendant Dinino will put on no evidence, and I remind you that he is not required to.

Dinino rests, is that right?

MR. BLOUSTEIN: That is correct, your Honor.

THE COURT: The defendant DeVito as I under-

stand has witnesses?

MR. PELUSO: Yes, Judge.

At this time, if your Honor please, Mr. DeVito calls Arthur Attanasio.

ARTHUR ATTANASIO, called as a witness by defendant DeVito, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PELUSO:

- Good afternoon, Mr. Attanasio.
 Where do you live, sir?
- A In Tallman, New York.
- O Do you know the defendant, Mr. DeVito?
- A Yes.
- Q How long have you known him?
- A Approximately nine to ten years.
 - O Do you know him socially or in business?

	1:00
1	lhjw los Attanasio - direct/cross
2	reputation.
3	MR. WALLACH: We don't have to do that.
4	THE COURT: You are just going to go into the
5	reputation as far as peacefulness and non-violent, that
6	is it?
7	MR. PELUSO: Yos.
8	(In open court)
9	Q Mr. Attanasio, you have common friends, haven't
10	you?
11	A I have common friends?
12	Q With Mr. DeVito?
13	A Yes.
14	Q Do you know Mr. DeVito's reputation for being
15	law abiding or peaceful?
16	A Do I know of it? What I know of him is yes,
17	he is law abiding, peaceful person.
18	Q What about his being violent or non-violent?
19	A I have never heard of him being violent and
20	I don't think he is.
21	MR. PELUSO: I have no further questions.
22	THE COURT: Mr. Abzug?
23	CROSS EXAMINATION
24	BY MR. ABZUG:

Mr. Attanasio, you live in Tallman, is that

1	1hjw 160 · Attanasio - cross			
2	A No, sir.			
3	Q Have you ever been to Knolls Limousine, sir?			
4	A No, sir.			
5	MR. ABZUG: No further questions.			
6	THE COURT: You may step down.			
7	(Witness excused)			
8	MR. PELUSO: Mr. DeVito calls Philip Tripi.			
9	PHILIP TRIPI, called as a witness			
10	by the defendant DeVito, being first duly sworn,			
11	testified as follows:			
12	DIRECT EXAMINATION			
13	BY MR. PELUSO:			
14	Q Mr. Tripi, where do you live?			
15	A 14 Smith Hill Road in Monsey, New York.			
16	Q What is your occupation?			
17	A I am retired from the New York City Police			
18	Department.			
19	Q How long were you in the New York City Police			
20	Department?			
21	A Twenty-one years.			
22	Q At what grade did you retire?			
23	A I was a second grate detective for twenty			
24	years about fourteen years.			
25	Q Do you know the defendant, Mr. DeVito?			

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	lhjw 161	Tripi - direct
2	Λ	Yes, I do.
3	· ·	How long do you know him?
4	A	About seven or eight years.
5	9	Do you know other people who know him?
6	A	Yes, I do.
7	Ω	Do you socialize with the defendant?
8	A	Yes.
9	O.	Have you ever been to his home?
10	A	Yes, I have.
11	Ŋ	Has he ever been to your home?
12	A	Yes, he has.
13	Ũ	Do you know what the defendant does for a
14	living?	
15	A	Yes, I do.
16	Q	What does he do for a living?
17	A	Private sanitation, carting.
18	Ó	Do you know if the defendant is married?
19	r. A	Yes, he is.
20	Q	Do you know if he has any family?
21	A	He has two children. He lives right in back
22	of me, in	back of my house. Our properties adjoin each
23	other.	
24	Q	Have you ever had the occasion to discuss the

.140
lhjw 162 Tripi - direct
defendant's reputation in the community?
A Yes, certainly.
MR. ABZUG: What community is that, your
Honor?
THE COURT: Please, let's
MR. ABZUG: I object, your Honor.
THE COURT: All right.
MR. ABZUG: As to form.
O In the community where you live, sir.
A In my neighborhood, in my community where
I life, in Monsey, Rockland County.
Q Do you know what the defendant's reputation
is as far as peacefulness, violence and law abiding is
concerned?
A Yes, I do. So far as I know him, he has always
been a law abiding citizen. I have never seen him violent.
He has always been helpful in the neighborhood. He has
never turned down a favor.
Q Do vou know him to be a family man?
MR. ABZUG: Objection.
THE COURT: Overruled.
MR. PELUSO: I will withdraw the question.
I have no further questions.

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lhjw 166

you should argue.

What did he mean when he said certain acts -THE COURT: Do not argue wile Mr. Wallach
is gone.

(Pause)

MR. WALLACH: Your Honor, in slip opinion dated November 10, 1975, U.S. against Bertolotti, a 1974 term case, slip opinion 6409 where the Second Circuit said in regard to a conspiracy case, they do not approve of a charge about intending the natural consequences of the act.

This is exactly where it says --

THE COURT: I will look at that tonight.

MR. WALLACH: In regard to the conspiracy.

They have to show a specific intent that the parties to the conspiracy intended specifically to violate a federal statute.

MR.ABZUG: I haven't had the benefit of reading that case. This is the first time it was brought up.

In any event, I would submit it would be relative to the substantive counts, your Honor, that charge.

THE COURT: I will consider this request to

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take a stretch. I may do it on my own initiative. We will adjourn after the summations until 10:00 o'clock tomorrow and I will deliver my charge promptly at 10:00, which hopefully will take about an hour, and then -- maybe a little less. Then you will start your deliverations after that. So that is our present schedule.

All right, Mr. Abzug. The order of the summations is that the government has the right to lead off, to make its principal summations first. The defense lawyers then have a right to sum up, and then the government has a right to make a very brief rebuttal, if it deems that necessary.

Okay.

MR. ABZUG: May it please the Court, Madam Forelady, ladies and gentlemen of the jury.

As I mentioned to you in my opening, this case is about two things essentially. There are two questions that you are going to have to decide when you go into deliberations. What are the two questions?

made extensions of credit to seven government witnesses in this case. Did John Dinino make extensions of credit to Samuel Herskowitz, did he make extensions of credit to Jackson, Levine, Ronson, Cassese, Charles Penker, Sidney

1hjw 171

question of that.

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Each witness testified, each of them testified that Vincent DeVito collected from them when John Dinino wasn't there for John Dinino's loans. Each witness testified -- we had many witnesses testify that John Dinino intorduced Mr. DeVito as his partner. We had

We had some witnesses testify that John
Dinino said "Vinny is going to be taking over for me now."

many witnesses testify that John Dinino told them "When

I am not here Vinny or Mr. DeVito is going to collect."

Finally we had Mr. DeVito himself say, when one of the witnesses said "Where is John," Mr. DeVito responded "Well, I am going to be taking over for John now."

So there is just an absolute -- a vast amount of evide.ce for you to find that there was an agreement between these two men to collect repayments on the loans that John Dinino made to government witnesses.

so what is the controversy? What are you really going to have to decide in that jury room? Because any discussions of whether there was an extension of credit or whether there was an agreement, that I would submit to you is just a smokescreen. It is a smokescreen that would be raised by the defense to distract --

MR. WALLACH: Objection, your Honor. They don't know what we are going to raise.

MR. ABZUG: It is argument, your Honor.

MR.WALLACH: It is not an argument directed against what we said, Judge.

THE COURT: The jury knows that. Please, let him proceed. The jury can make its judgment between the two of you or the three of you.

Go ahead, Mr. Abzug.

MR. WALLACH: I apologize to the Court, but I am constrained to make these objections, Judge.

THE COURT: Please. We will try to avoid these interruptions of the summation.

MR. ABZUG: May I proceed, your Honor?

THE COURT: Yes. I thought you said that it wasn't in controversy, so I do not know why we have to raise it anyway.

MR. ABZUG: Not in controversy in my mind.

If it is raised, I would submit to you that it is a smokescreen to distract your attention from the conduct of the
defendants. Any discussion about a loan or whether there
was an agreement between these men, that is irrelevant
and is just a smokescreen.

The question is whether the defendants agreed

1 lhjw 173

to use extortionate means to collect these debts. That's the question. That is what you are going to have to decide. It is whether the acts and words of the defendants instilled a fear in the persons that they were collecting from or whether it was reasonably calculated to do so in light of the surrounding circumstances. That's what you have to decide.

It is not necessary that the witnesses testified they were afraid, because some of the witnesses testified they weren't afraid in this case. And I think you know why.

MR. BLOUSTEIN: Objection.

MR. WALLACH: Objection. Move for a mistrial, Judge.

if you both remain seated unless there is an absolutely imperative clear ground for objection. You have a right to make your summations uninterrupted, and I will certainly put Mr. Abzug down in he interrupts you, and the same goes for Mr. Abzug. He has a right to proceed. He has not said anything improper so far to my mind.

It is up to the jury to weigh what he says, and I will tell the jury that it is the evidence that matters and not what the counsel say, that counsels'

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Mr. DeVito is a perfect gentleman. Does it sound like it when Ronald Levine owes Mr. Dinino \$500 and Mr. Dinino says, "I am going to send the boys downtown, I am going to send the boys down to straighten you out," is that consistent with Mr. Levine's testimony here today in this trial in front of the defendants or is it consistent with what he said in the grand jury? I would suggest to you his grand jury testimony is the testimony to believe.

What is the evidence in this case? What is the government's evidence? Let me briefly go over it with Samuel Herskowitz.

Again, there is no controversy that Samuel
Herskowitz received a loan, he received many of them
from the defendant, all at usurious interest rates. He
was paying usurious interest rates to John Dinino. He
pays, he pays, he pays, he never misses a payment. This
is the important thing to keep in mind I would suggest to
you, because these guys don't -- there are no problems
here until these guys miss payments, and then the crunch
comes.

All right, he pays John Dinino. In fact, he leaves Carter Cab and he goes down to work in Manhattan, and his testimony was every Friday from Broadway he would ride fifteen miles up to Carter Cab to make sure that he

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going to pay as soon as you go back to work." What did
the defendant mean when he grabbed him by the arm and said,
"You got to pay"? Was it in code? Was he talking in
Latin? Or was he talking in English? What did he

intend when he said that? Did he put Mr. Herskowitz in

actual fear by those words? Yes, he did.

Mr. Herskowitz testified that at the time that statement was made, he was afraid. He agreed to make payments to John Dinino, even though he was a sick man. That's what this case is about.

Were those words reasonably calculated to instill fear in that witness? Sure it was. John Dinino wasn't joking around. He wanted his money.

Vinny DeVito was taking advantage of the situation. He was an integral part of this system.

Vinny DeVito was making collections for Mr. Herskowitz.

Count 2, this is Ronald Levine. Ronald Levine got on and testified that he had no problems with Mr. Dinino, he had no problems until he had his gambling los: and he couldn't come up with the money.

See, this is my point on opening. You don't kill the goose that lays the golden egg. As long as these guys are making payments, the defendants are willing to squeeze blood out of a rock.

1hjw 185

repay the money? Sure he was. He wasn't kidding around.

This is a threat. A threat to get Mr. Levine to come up with the money. He sure did, because what did Mr.

Levine do when John came up with that threat? Remember what his testimony was?

His testimony was he went to another shylark, Norman Ralsky, and said, "Norman, give me \$200 because I got to pay John off, John who he was too afraid to confront today, sitting here, I can't emphasize enough how he looked. He looked like he was about to pass out, he was so afraid.

That's not consistent with an explanation of friendship for a man to go to one shylark to pay another. He was afraid, ladies and gentlemen. He was afraid, and the defendant meant him to be afraid.

Again, Viene DeVito took advantage of this system. There is no evidence, there is not any direct evidence in Counts 1 or 2 concerning Ronald Levine and Samuel Herskowitz that Vinny DeVito actually threatened, but he didn't have to, because he was taking advantage of the system that Mr. Dinino had constructed. He was making payments, he knew what was going on.

Do you know why he said -- do you know what the evidence is that he knew what was going on? When were

1 | 1hjw 195

and knocked his glasses off. Then what happened? He said, "I will pay." He did pay right after that. His original thought was, "Hey, I already paid this payment to John so I am not going to pay Vinny."

Then what did Mr. DeVito do when that happened? Did he say, "I will check back with John" or "Maybe there is some misunderstanding"? No. He knocked his glasses off, slapped him. That's what happened.

what that man's motivation was to pay other than that slap. You recall his grand jury testimony. That's the evidence before you. What he said in that grand jury was when I asked him in that grand jury why did you pay, did you pay because you were slapped, he said, "Oh, I believe it had something to do with that."

I think it did have something to do with that because it sure didn't have anything to do with anything other than that, and there is no testimony before you that it did. The reason was because of the missed payment. Don't forget this. It is not only Mr. Cassese's testimony, it is Mr. Penker's testimony.

Mr. Penker saw that incident and you have testimony about it. You have corroboration of that incident.

Mr. Penker testified that the incident took place. Mr.

1 | 1hjw 223

I'don't think it is nice, but 'don't think it was the crime charged in this indictment.

charge, consider the law, consider the testimony, not from my lips, not from Mr. Abzug's lips, but the testimony of the witnesses. If you are thoroughly convinced beyond a reasonable doubt that the defendants did resort to extortionate means, then you are under a duty, you took an oath to convict.

But unless you are so thoroughly convinced, as his Honor will charge you, and this is the law that applies not only to Mr. DeVito, it applies to each and every one of us, if some day, heaven forbid, we should happen to be sitting in the defendant's seat, all I say is be guided by the law. Listen to the charge. Remember the evidence. If you don't remember it, have it read back. I am certain that you will find there was no extortion, no threats, no violence.

Thank you, ladies and gentlemen for your time.

THE COURT: Do you have any rebuttal?

MR. ABZUG: Yes, your Honor, very briefly,

because I know it is late and the jury wants to get home.

I will be very brief. I just want to make a couple of points in response to the defendants' argument.

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I said a smokescreen, and I submit there has been one. The first point is that somehow the fact that these men needed money is an excuse for what went on here.

with that, Congress passed this statute especially to protect men who needed money. Obviously, these men did need money. Sure they did. And the defendants took advantage of it. That's what you are talking about.

I think some of you probably know what the definition of chutzpah is. Chutzpah is a word that means gall or arrogance. A classic definition of chutzpah is the little boy who kills both of his parents and goes to the Court and pleads for mercy because he is an orphan. That is exactly what they did here.

They said they loaned this money out to the government witnesses, they didn't pay us back and now you have to excuse us because they needed the money. That is no excuse and that's no answer.

Mr. Dinino made a very interesting admission on his summation, and this you should bear in mind when you go into your deliberations. This goes to state of mind. It is not my state of mind that is relevant here, whether I was born and bred in Los Angeles or Brooklyn or Seattle. It is the defendant's state of mine. That is what

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respect, my understanding of the rules are that if an objection is to be made or can be made as to a summation, it has to be made during the summation or else it is deemed waived. That is my understanding.

As your Honor is probably aware, there is a case decided en banc by the Second Circuit a number of years, U.S. against Inviglio, which says these things are not put on the record and a timely objection made, you can't argue about it --

THE COURT: Please, make your motions.

MR. WALLACH: I am now moving for a mistrial because of the district attorney's summation, it is excessive. I would like to point out a few specifics.

Firstly, the district attorney in his opening pilloried the defense --

THE COURT: Please, state your grounds.

MR. WALLACH: That's the grounds.

THE COURT: I do not have time for an

oratory.

MR. WALLACH: He went into a supposed defense
that was never interposed in this case and commented
because his witnesses did not live up to his expectations
that somehow or other this was attributable to the defense
and that the defense minimized their witnesses. The implica-

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tion is, of course, that the cross examination wasn't to the prosecutor's liking in this case and by the manner of the questions there was some relationship between the defense and the government's witnesses.

Furthermore, your Honor, there is practically an express remark that somehow or other these witnesses were reluctant to testify favorably for the government because of something the defendants did.

There is absolutely no proof in this case
that the defendants did anything. The fact that a ditness
for the prosecution doesn't live to the prosecutor's
hopes--

had one witness, Mr. Herskowitz, who expressly stated he was airaid on the stand, and it is certainly -- the essence of what the government was arguing was that there was a reason that these witnesses may not have or did not tell the full truth, because they were afraid, and there was circumstantial evidence of that or direct evidence of that on the stand. It was in my view fair comment.

What else do we have?

MR. WALLACH: It is thoroughly poor taste for the government prosecutor to tal- to the jury and use a word that frankly talking is not English. I just don't

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understand what the purpose of using that word was, if not to appeal to sympathy of some jurors.

MR. ABZUG: The word is chutzpah in Yiddish.

THE COURT: I am not granting a mistrial because of that.

MR. WALLACH: I am putting that on the record.

THE COURT: The only thing I want to mention,

I did reconsider overnight about Count 3 and I am going

to dismiss Count 3 and grant a judgment of acquittal on

Count 3.

Just to very, very briefly explain this, I amalyzed the language a little more than I had at the time we were talking yesterday, and 891.7 defines extortionate means as any means which involves -- and I am just going to give the language now that is pertinent to this case. It is as follows:

Any means which involves the use or express or implicit threat of use of violence to cause harm to the person, reputation or property of any person. There are the following steps in that chain of language: Means which involves the use or the threat of use, I guess that is the first step; the second step is of violence; and the third step is to cause harm to the person or reputation,

and so forth.

A call by Mr. Dinino to the wife of Mr. Ronson may arguably have been -- or the threat to make that call may have arguably been the threat to cause harm to reputation. But that isn't the only step in the statute, and the statute provides for -- the statute renders criminal only a threat of violence or other criminal means to cause harm to reputation.

There was no threat of violence to cause harm to reputation, there is nothing in the record about a threat to use other criminal means to cause harm to reputation.

I could not conscientiously charge the jury on that. I could think of no way to sensibly charge the jury on that point and have any fidelity with the statute.

I get your general idea, but I think we still have to stick with the language of the statute, which means that I am going to dismiss Count 3.

I am going to direct, just for the sake of clarity and eliminate confusion, I am going to direct that the references to Ronson be eliminated from the first count, the conspiracy count, and I will instruct the jury, naturally, that they are not to draw any inferences from the dismissal of the third count, that the other

counts -- that there should either be guilty or not guilty verdicts.

MR. ABZUG: Would your Honor wish the government to prepare a redacted copy of the indictment? I would prefer it, your Honor.

THE COURT: You better do that. But you have to get your people on that.

MR. WALLACH: Before the jury is called in, could we have five more minutes? I don't feel well, frankly.

THE COURT: All right, you have five minutes.

MR. BLOUSTEIN: Apropos of something your

Honor told us the other day, I questioned my people, Dinino

and his family, as to whether or not anybody had spoken

to any witness in this case, and I just wanted the record

to show that there were absolute denials.

THE COURT: I just wanted to issue a warning because we were in a sensitive spot that night. Thank you very much.

Let's have our five minutes and I will see you.

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CHARGE OF THE COURT

Judge Griesa

(In open court - jury present)

THE COURT: Ladies and gentlemen, I am sorry for the late start, but we had a few things to attend to.

I have one announcement to make to you initially, and that is that I am dismissing Count 3 of the indictment. This count refers to Sherman Ronson.

I am also striking from Count 1, which is the conspiracy count, I am striking all references to Sherman Ronson.

The reason is, as you recall, that is the count where the witness testified and the government conceded there was no claim of any violence or threat to violence, and the government's case was based upon the alleged threat to call the wife and the calls to the wife.

Upon a closer look at the statute, I determined and concluded that as a matter of law that proof does not rise to the level required by the statute. So you may disregard -- you will obviously not be involved in any determination on Count 3. That is out of the case.

You will not be involved in any consideration of any conspiracy involving Sherman Ronson.

this, that by dismissing one count I am not indicating nor should you infer anything about what your verdict should be on the other counts, on the other issues which remain in the case. They are for your determination and your verdict of guilty or not guilty in the normal way.

Dismissing one count does not indicate that the other counts are proved or disproved. It is completely neutral as to those other counts.

Ladies and gentlemen, you as the jury are about to enter on your final functions in the case. We are performing what is really a sacred obligation of citizenship in sitting on this case. As I indicated at the beginning of the trial, you are under an obligation to perform your function in an attitude of complete fairness, impartiality, without the slightest bias or prejudice, for or against the government, for or against the defendant.

This case is clearly of great importance to the government, since the enforcement of the criminal laws of this country is a matter of high concern to the nation and to the community.

At the same time, the case is equally important to the defendants because of the obvious consequences of conviction for a crime. So what you are performing is a

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very important task for all sides.

I am not saying this to say something that is just a platitude. I am trying to emphasize something which I think you do understand already, that you are obliged to work hard and conscientiously in this case to reach a just determination.

The fact that the United States government is a party to this action entitles it to no greater consideration than the consideration owed to a defendant.

By the same token, the government is entitled to no less consideration. In fact, both the government and the defendant are equals in this court, which is a court of justice to all parties.

Your final role is to decide and to pass upon the facts, the issues of fact. You, the jury, are the sole and exclusive judges of the facts. You pass upon the weight to be given to different portions of the evidence. You determine the credibility of the witnesses. You resolve any conflicts in the evidence.

In passing on the facts, you will draw reasonable inferences from one fact in evidence to another fact.

This relates to what we call circumstantial evidence, and

I will instruct you on that a little later.

My function as the Court is to instruct you

on the law, and it is your duty to accept these instructions on the law whether or not you may agree with them, and then it is your duty to apply the rules of law to the evidence and arrive at a verdict at the conclusion of your deliberations.

With respect to any matters of fact, it is
your recollection of the evidence that governs. Each of
the attorneys has given you his summation as to what he
contends has or has not been proved in the evidence, but
the summations are not in themselves evidence and are
not to be substituted for your recollection of the
evidence.

The evidence consists of the testimony from the witness stand, any exhibits which have been admitted into evidence and in this case in some instances consists of testimony of certain witnesses given at grand jury proceedings.

The fact that rulings have been made by me during the trial on procedural matters or on evidence matters or on other questions of law, the fact that occasionally questions have been asked of witnesses by me, none of these things should be taken in any way to indicate any view of mine as to what your verdict should be. Nothing whatever in these instructions should be

taken by you as an indication of what your verdict should be.

A little later I will summarize some features of the evidence, but I will remind you then, as I will remind you now, that you are the sole judges of the facts. If your memory of the evidence differs from what I say to you, it is your memory which governs. My summary to you will be simply to assist you in organizing the issues which you are to be working on, and hopefully my summary of the evidence, some features of the evidence, will refresh your memory this morning as to other points of evidence.

But as I will say to you later, and I want to emphasize it now, it is your memory of the evidence that governs and your obligation is to consider all the evidence, and not just what I mention to you or the attorneys mention to you. You are certainly in no way bound by what we say the evidence is, as I have indicated.

I want to make clear that just as you respect my role as the Court, I thoroughly respect yours as the finders of the facts, and I have no intention whatever to tread upon that or interfere with it.

I told you at the beginning of the trial and
I will repeat again now, the indictment is merely an accusation

It is a charge of crimes alleged to have been committed.

It is no evidence or proof of guilt. No weight whatever is to be given by you to the mere fact that an indictment has been returned against the defendants. It is the evidence in the trial that matters and the evidence alone.

The defendants have pleaded not guilty, which means that the government has the burden of proving the charges against them beyond a reasonable doubt. A defendant does not have to prove his innocence. He is in fact presumed to be innocent of the accusations contained in the indictment.

at the start of the trial, it is in his favor as I instruct you now and it remains in his favor during your deliberations in the jury room. It is removed only if and when you are satisfied that the government has sustained its burden of proving the guilt of the defendants beyond a reasonable doubt.

What do we mean by a reasonable doubt? A neasonable doubt is a doubt founded in reason, arising out of the evidence or lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. It is a doubt which appeals to your judgment, your common sense, your experience, but all of this is in

contrast to some things which it is not.

It is not caprice, whim, speculation, mere suspicion. It is not sympathy, a desire to avoid an unpleasant duty, mere personal feeling, that kind of thing. The key word is reasonable.

Now, if after a fair and impartial consideration of all the evidence you say that you are not satisfied as to the guilt of a defendant, if you have a doubt which would cause you as prudent persons to hesitate before acting in matters of importance to yourselves, then you have a reasonable doubt, and in that circumstance it is your duty to acquit, to return a verdict of not guilty.

On the other hand, if after a consideration of all the evidence you candidly and honestly say that you do have an abiding conviction of a defendant's guilt, such a conviction as you would be willing to act upon in important matters in your own lives, then you can say that you have no reasonable doubt, and under those circumstances it is your duty to convict.

One final word on this subject. Proof beyond a reasonable doubt does not mean proof to a positive certainty or beyond all possible doubt. If that were the rule, few persons, however guilty, would ever be convicted. It is practically impossible for any of us to be absolutely

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and completely convinced of any controverted fact, unless possibly in the realm of mathematics, or something like that.

So the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, but not beyond every possible doubt.

As I said at the beginning of the case, you are obliged to make the determination on the credibility of the witnesses. How do you evaluate the credibility of the witnesses?

In the first place, you bring into the courtroom with you your everyday common sense, your good
judgment and your experience. You will bring these faculties
to bear when you evaluate the witnesses and their
credibility.

You have, of course, heard the witnesses on the stand and you have observed their manner of testifying. You will consider your basic impression as to whether or not each witness was telling the truth, was giving you a candid and accurate version of what occurred or was doing otherwise.

In arriving at your basic impression of whether a witness was or was not telling you the facts, it is well

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to keep in mind that witnesses are human beings from a variety of walks of life and backgrounds. The ultimate

like or a personal respect or disrespect for the witness.

question is not whether you have a personal like or dis-

whether in view of all the circumstances you believe that the witness has told you facts which you can rely on and which contribute to your knowledge of the factual picture in this case.

I is up to you as the jury to determine whether any of a witness' testimony is accurate and believable, whether all of it is or whether none of it is.

I mentioned above your basic impression of the witness, which is the starting place, but as I indicated a few days ago in my initial discussion of this matter, you will also consider things beyond your basic impression of how the witness appears.

or coincides or does not jibe or does not coincide with other evidence in the case. You will consider the basic probability or improbability of a witness' testimony. You will consider any inconsistencies. Has the witness testified differently within the testimony in court? Has he said one thing at one time and another thing at another

time?

Has he said something different here from what he said on a prior occasion? That is to be considered by you in determining his credibility.

If you find that inconsistencies or contradictions have been given in this way, then you weigh how important they are. Are they trivial, are they enough to make you have doubt about the witness' basic testimony?

In this case in one or two instances the government read from the grand jury testimony of a witness, and you may find that the grand jury testimony was in some respects different from testimony given here in court.

I am not saying that you should or should not so find, but I am just instructing you how to approach it, if you do find that there was an inconsistency. It is up to you to determine whether you accept either version or no version. You are entitled to decide that one version is the version you accept and the other that you reject. You are to weigh both versions, if you find that there are two versions.

You are entitled to consider whether a witness had a bias in favor of the government or against the government in determining the validity of his testimony.

You are entitled to consider whether he had any fear of

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the defendants or any bias in favor of the defendants.

Again, I am not trying to indicate in any way that you should find those things. I am trying to indicate the questions that you are entitled to consider on this question of the credibility of the testimony you heard.

You are entitled to consider that certain of the witness' testimony, as I said, was valid and that certain of it was influenced in such a way as not to be credited.

Again I repeat, I am repeating it too much, that I am not suggesting that you do find these things, I am suggesting the kinds of consideration that are available to you, depending on what you work out on a sensible analysis and close analysis of this testimony.

I mentioned the term circumstantial evidence a few minutes ago. This term is used in contrast to direct evidence.

Direct evidence means basically the testimory of an eyewitness. Someone says that he saw something, he heard something, that kind of thing, that is direct evidence.

What is circumstantial evidence? Circumstantial evidence is where one fact or perhaps a chain of facts gives

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rise to a reasonable inference of another fact. We always in these instructions try to give examples, and they are so unrelated to the case I do not know that they have much meaning, but maybe this will convey something to you.

Suppose I see fire engines going towards a building, sirens at full blast. The engines stop outside the building. A fireman rushes in and immediately rushes out and the fire engines go home. I have not seen any direct evidence on this point, but it is reasonable to infer from these circumstances that someone turned in a false alarm, that there was no fire and that the alarm was false.

Again, I did not see anybody pull the lever or pick up the phone, but it is reasonable to infer that that happened.

So if one fact or group of facts on the basis of common experience leads you logically and reasonably to infer other facts, then this is circumstantial evidence, and it is of no less value than direct evidence.

As you know, neither of the defendants testified in this case, and I instruct you that it was the absolute constitutional privilege and right of these defendants not to testify. The important point is for you to recognize

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the same?

that and, furthermore, to make sure that you draw no inference whatever from the fact that the defendants did not testify.

In other words, when you are deliberating and you are assessing the items of evidence that you believe go to prove the government case or to weaken the government case, whatever way you are considering it, you cannot consider in any way the fact that the defendants did not testify. You can draw no inference from that whatever.

Now let us come to the charges in the indictment. The indictment contains two types of counts: A conspiracy count and certain others which we call substantive counts.

Count 1 is the conspiracy count and Counts

2, 4, 5, 6 and 7 are the substantive counts. Let me
briefly describe the distinction.

May I ask you, as I understand it, the indictment is being retyped to take out Count 3?

MR. ABZUG: It has been redacted, your Honor.

THE COURT: Is the numbering going to remain

MR. ABZUG: The overt acts have been renumbered, the numbers on the counts have not been renumbered.

THE COURT: Then we can use the same numbers.

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Counts 2, 4, 5, 6 and 7 are the substantive counts. Let me briefly describe this distinction.

A substantive count charges a particular criminal act. A conspiracy count charges a conspiracy or agreement among two or more persons to carry out that criminal act.

The essence of the crime of conspiracy is the agreement to do an illegal act.

In describing to you the elements which the government must prove in order to establish the various counts, I believe it would be helpful if I start with the substantive pounts, Counts 2 and so forth. I will read Count 2, and I will say to you now that you will have the indictment in the jury room during your deliberations and you can refer to it, so under no circumstances feel that you have to memorize this as am reciting it or reading it. But by way of background, I will read you the exact language.

"Count 2: The grand jury further charges
from in or about January, 1968 up to and including in or
about October, 1973, in the Southern District of New York
and elsewhere, John Dinino and Vincent DeVito, the defendants,
unlawfully, wilfully and knowingly did participate in the
use of extortionate means, that is means involving the use

and express and implicit threats of use of violence and other criminal means to cause harm to the person, reputation and property of Ronald Levine in order to collect and attempt to collect extensions of credit from said Ronald Levine and to punish said Ronald Levine for the non-payment thereof."

As you know from hearing this language, this is somewhat complicated, legalistic language. It has a lot of "ands", and when I describe to you in a minute the elements that the government must prove, I am going to describe to you what this boils down to as a result of the evidence in this case, but that I will do in a moment.

counts 4, 5, 6 and 7 are the same as Count 2, except that somewhat different starting dates are used and each of these other counts refers to a different alleged person who was the object of the alleged extortionate acts.

Count 4 refers to Philip Jackson, Count 5 to Sidney Shalkin, Count 6 to Charles Penker, Count 7 to Philip Cassese.

Each of these counts refers to the federal statute on which this case is based, and that is Title 18 United States Code, Section 894, which provides in pertinent

part:

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"Whoever knowingly participates in any way
in the use of any extortionate means to collect or attempt
to collect any extension of credit or to punish any
person for the non-payment thereof is guilty of a crime."

An extention of credit is any loan of money and also includes a gambling debt. The phrase extortionate means is defined as any means which involves the use or an express or implicit threat of use of violence to cause harm to the person, reputation or property of any person.

for the puriouses of our case, this boils down to the following:

In connection with the collection of a debt, it is a crime to knowingly participate in any way in the use or the express or implicit threat to use violence to cause harm to the person of some other individual or person.

This statute reflects the concern of the Congress with certain practices associated with usurious loans. Such loans to individuals as a general rule are illegal under state law and cannot be enforced in any legal manner. The federal statute is designed to restrain the effort of usurious moneylenders from seeking extra legal methods of enforcing their illegal agreements.

of course, the crime charged here is not the making of usurious loan agreements. The crime charged as provided in the statute involves certain methods of collection of such debts as defined by the statute.

Let me list for you that you must find in order to convict on the substantive counts, Counts 2, 4, 5, 6 and 7.

In order to convict a defendant on any of these counts you must find that the government has proved beyond a reasonable doubt the following elements. I should note at this point that each of these counts alleges that both defendants participated in the alleged unlawful activity. However, as to each count you must determine whether the government has proved guilt beyond a reasonable doubt as to each defendant.

Some of the proof may logically bear on both defendants, but what I am saying is this. As to each count you must ask yourselves, has the government proved its case as to Defendant Dinino and then ask has the government proved its case against Defendant DeVito.

Here are the elements the government must prove beyond a reasonable doubt in order to convict on the substantive counts:

First, that the particular person referred to

in the count, such as Ronald Levine, et cetera, owed money on loans or gambling debts at some time during the relevant period; second, that the defendant on certain occasions collected or attempted to collect money from this other individual; third, that in collecting or attempting to collect such money the defendant knowingly participated in some way the use of extortionate means, that is the use of violence to harm the person of the debtor or express or implicit threats to use such violence.

As to the first two elements, the necessity of proof of debts and collections or attempts at collections, no elaboration is necessary; however, I will give you certain instructions regarding the third element.

This element is satisfied if you find that
the defendant in connection with collection efforts knowingly
participated in some way in the use of violence to harm
the person of the debtor or the element is satisfied if
you find that the defendant knowingly participated in
express or implicit threats to use such violence.

An express threat is one stated in words. An implicit threat? threat is one which is intended to be understood from certain things that are said, although they are not direct threats, or is intended to be understood from jestures or

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actions.

You have heard the testimony of certain of the debtor witnesses denying that they were threatened. It is for you to assess the credibility of this testimony as well as all the other testimony. You are to consider among other things whether this testimony is influenced by factors such as fear of the defendants.

I am not suggesting that this is the case, I am simply saying that this is one of the questions for you to consider.

I also instruct you that the testimony of a witness that he was not threatened, even if believed by you, is not conclusive or binding upon you. You will consider this testimony, but you will also consider all the other testimony about the defendants' statements and conduct and about the surrounding circumstances, and you will make your own determination as to whether the government has proved that express or implicit threats we made or participated in by a defendant.

Normally we understand a threat to be something which causes fear. You have heard the testimony of certain of the debtor witnesses denying that they were made to be afraid. Again, it is for you to assess the credibility of this tesitmony.

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But, in any event, it is not necessary for the government to prove that fear was actually induced in the debtor. It is the conduct of the defendant rather than the debtor's individual state of mind to which the statute is directed.

what the government must show in order to convict for an unlawful threat here is that the defendant intended to instill fear in the debtor by words or actions reasonably calculated to do so.

threats were merely the normal earthy language of the kind of people involved in these transactions and in this environment, and that the government has not proved that the statements in question were intended to arouse fear or were reasonably calculated to arouse fear.

It is for you to determine whether the language used falls in the category of a threat. In this connection you will, of course, consider the circumstances of the utterances in determining whether they were intended to have a threatening meaning or were merely intended to have a jocular or joking or innocent meaning.

of the debtor witnesses to the effect that they repeatedly over long periods of time sought out the financial

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arrangements and had friendly relationships with the defendants. You will weigh this testimony like all the testimony as to its credibility. You will consider it on the question of whether the government has proved its case of violence or threats of violence.

But I charge you that if you find that there was violence or we set threats of violence, it is no defense that the debtors were generally friendly with the defendants or submitted to or tolerated these conditions.

I also charge you that it is not necessary
that the defendant personally inflict the violence or the
threat of violence. The statutory language is "Knowingly
participates in any way." Thus, if you find that one
defendant arranged to have the other defendant or still
another person, such as Louie referred to, go to the debtors
to collect money with the knowledge that they would use
violence or threats of violence, and if such violence or
threats of violence were actually used, then this would
be knowing participation within the meaning of the statute.

Now let me instruct you on the conspiracy count, Count 1. I will read it to you:

"The grand jury charges: 1. From in or about January, 1968 and continuing up to and including October,

1973, in the Southern District of New York and elsewhere,
John Dinino and Vincent DeVito, the defendants, together
and with each other and with other persons to the grand
jury unknown, unlawfully, wilfully and knowingly did
combine, conspire, confederate and agree to commit certain
offenses against the United States, to wit, to violate
Title 18 United States Code, Section 894.

"It was part of said conspiracy that said defendants would and did agree to and would and did participate in the use of extortionate means, that is means involving the use and express and implicit threats of violence and other criminal means to cause harm to the person, reputation and property of Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel Herskowitz in order to collect and attempt to collect extensions of credit from said persons and to punish said persons for the non-payment thereof."

Paragraph 3 of Count 1. "Among the means whereby the defendants would carry out their agreed upon unlawful purposes were the following:

"A, the defendant John Dinino would loan certain sums of money at rates of interest exceeding fifty percent per annum to Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel

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John Dinino and Vincent DeVito, the defendants, together and with each other and with other persons to the grand jury unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree to commit certain offenses against the United States, to wit, to violate Title 18 United States Code, Section 894.

"It was part of said conspiracy that said defendants would and did agree to and would and did participate in the use of extortionate means, that is means involving the use and express and implicit threats of violence and other criminal means to cause harm to the person, reputation and property of Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel Herskowitz in order to collect and attempt to collect extensions of credit from said persons and to punish said persons for the non-payment thereof."

paragraph 3 of Count 1. "Among the means whereby the defendants would carry out their agreed upon unlawful purposes were the following:

"A, the defendant John Dinino would loan certain sums of money at rates of interest exceeding fifty percent per annum to Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel

Herskowitz.

"B, the defendant John Dinino would collect and direct the defendant Vincent DeVito to collect weekly payments of money which the defendant John Dinino claimed were owing to him by Ronald Levine, Philip Jackson, Philip Cassese, Charles Penker, Sidney Shalkin and Samuel Herskowitz.

"C, the defendants John Dinino and Vincent
DeVito would make express and implicit threats of physical
injury to Ronald Levine, Philip Jackson, Philip Cassese,
Charles Penker, Sidney Shalkin and Samuel Herskowitz in
the course of collecting and attempting to collect said
payments and for the purpose of inducing these persons to
make said payments.

"Overt Acts. In furtherance of said conspiracy and to effect the objects thereof, the defendants in the Southern District of New York committed and caused to be committed the following overt acts, among others:

"One. In or about October, 1971, the defendant John Dinino received a sum of money from Philip Jackson at A. s Taxi, 5975 Broadway, Bronx, New York.

"Two. In or about October, 1968 the defendant John Dinino met with Ronald Levine at the Carter Cab Company, 6087 Broadway, Bronx, New York.

"Three. In or about October, 1971 the defendant John Dinino loaned a sum of money to Sidney Shalkin.

"Four. In or about March, 1972 the defendant John Dinino loaned a sum of money to Charles E. Penker.

"Five. In or about August, 1969 the defendant John Dinino met with Samuel Herskowitz at the Carter Cab Company, 6087 Broadway, Bronx, New York.

"Six. In or about the months of April, May and June, 1972, the defendant Vincent DeVito met with Philip Cassese at the Carter Cab Company, 6087 Broadway, Bronx, New York."

The statute on which Count 1 is based is the same as that which relates to the substantive counts. It is 18 United States Code, Section 894.

The statute not only makes it a crime to participate in the use of extortionate means for the collection of debts, but it also makes it a crime to conspire to do so.

In order to find a defendant guilty under Count 1, you must find the following elements beyond a reasonable doubt:

Pirst, that at sometime between January, 1968 and October, 1973 the defendants entered into an agreement

to use violence or express or implied threats of violence to harm the persons of others in order to collect debts; second, that at least one of the defendants committed at least one of the alleged overt acts set forth in the indictment in furtherance of the conspiracy.

Now for some elaboration of these elements of the crime of conspiracy.

A conspiracy, sometimes referred to as a partnership in crime, presents a greater potential threat to the public interest than the illegal activity of a single individual. Conferted or collective action for criminal purposes often makes possible the attainment of ends more complex than those which an individual acting alone would be able to accomplish. Group association increases the likelihood that the criminal object will be successfully realized and renders detection more difficult than in the instance of a sole wrongdoer. It is for these reasons that Congress has made conspiracy a separate crime.

what is a conspiracy? A conspiracy is a combination or agreement of two or more persons to accomplish a criminal or unlawful purpose by concerted action. The gist of the crime of conspiracy is the unlawful combination or agreement to violate the law.

However, to establish a conspiracy, the government is not required to show a formal agreement or indeed to show direct evidence of the actual making of an agreement.

unlawful agreement, you will view the acts and statements of the alleged members of the conspiracy. You will consider whether these actions and statements of the defendants when taken together with the reasonable inferences flowing from this evidence show that a conspiracy or agreement of the kind referred to in the indictment was made.

If upon such consideration of all the evidence, both direct and circumstantial, you find beyond a reasonable doubt that the defendants agreed to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the conspiracy is established.

In order to convict a defendant on Count 1,
the conspiracy count, you must find beyond a reasonable
doubt that the defendant participated in the common scheme
with the intention of assisting in the illegal objectives,
that is the use of violence or threats of violence to
obtair collection of debts.

I will now turn to the second element which must be proved in order to convict a defendant on the

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conspiracy count. This relates to what we call overt acts.

If you find that the defendants entered into the conspiracy of the kind alleged, you must still be satisfied before you can convict that at least one of the defendants committed at least one of the overt acts alleged in the indictment.

An overt act simply means an act charged as having been committed by one of the conspirators in an effort to the conspirator of the conspiracy.

An overt act is not required in itself to be a crime considered separately, but it must be an action, some action, taken to achieve or further the purpose or object of the conspiracy.

The law requires proof of such an act on the premise that while people might conspire and agree to do an unlawful thing, they might change their minds before anything was done to carry out the unlawful purpose.

In that event, it has been thought that the plan or scheme, when there is no action to effect it, ought not to be condemned as criminal.

I have read to you the list of the alleged overt acts and I need not repeat that. I simply reiterate that the government must prove one of these overt acts.

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It follows, of course, that the government need not prove all of them.

Now I come to a summary which I will give of certain of the evidence in the case. I want to repeat my caution, that if my statement of the evidence does not accord with your memory, your memory controls because you are the exclusive triers and finders of the facts. I will also reiterate my cautionary statement that my summary will not include all the evidence. My purpose is to help organize for you the issues which you are to decide and to state certain salient features of the evidence in the hope that they will remind you this morning of other evidence.

But all the evidence is relevant and you must consider all the evidence in ariving at your verdict.

My summary will in general follow the order of the witnesses as these witnesses relate to the substantive counts.

In other words, the first substantive count refers to Ronald Levine, and I will summarize his evidence first. I will summarize the other witnesses or others of the witnesses in the order of the respective substantive counts.

Ronald Levine testified that he met Dinino and

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DeVito together at Al's Taxi in late 1970 and borrowed \$500 on behalf of Philip Jackson. Although Levine did not mention Jackson's connection to either Dinino or DeVito then.

In February or March, 1971, according to

Levine's testimony, Levine observed an argument between

Dinino and Jackson when Jackson was insisting that the

loan should now be treated as Jackson's loan, not Levine's

loan.

Levine testified that he heard Dinino say
that he would kick Jackson in the balls if Jackson did not
stop arguing. Levine testified at the trial that he
felt uneasy as a result.

Levine testified before the grand jury that he was frightened. Levine testified that in the summer of 1972 he borrowed \$300 from DeVito. He testified that DeVito was a perfect gentleman. Levine testified that he made payments to DeVito until early 1972 and then made payments to Dinino, and this loan was paid off.

Levine testified that he borrowed \$300 from Dinino in September, 1972 and that later Dinino repaired Levine's car for \$275. Levine testified that he then made an additional loan, bringing the loans and auto repair balance up to \$1,000.

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Levine testified that in late 1972 he gambled with Dinino for about a month or gambled through Dinino for about a month. L /ine testified that at one point he told Dinino he could not pay a \$500 gambling debt. Levine testified that Dinino said "I don't want to hear it, I have to have the money."

Levine testified before the grand jury that on this occasion Dinino said he would send around a few guys to straighten Levine out, that Levine was afraid and paid because he was afraid of things like having his legs broken.

Levine testified at the trial that he gave this grand jury testimony under pressure from the federal attorney. Levine testified at the trial that after this conversation with Dinino he borrowed the \$500 from another lender, Norman Ralsky, and paid Dinino.

On cross examination Levine testified that neither Dinino nor DeVito ever threatened him, that he was on friendly social terms with Dinino, and that he felt both Dinino and DeVito were doing him faurs.

Levine testified that the expressions used by Dinino were the way the men talked and meant nothing. Levine testified on cross examination that in an FBI interview he had failed to admit knowing Dinino or DeVito

because he did not want to see them get sent up.

Philip Jackson testified that he borrowed money from Dinino beginning in late 1970 and that Dinino introduced DeVito as his partner in mid-1971 as someone who could receive payments if Dinino was not there.

Jackson testified that he gambled through Dining in the fall of 1971 and arranged for Ronald Levine to borrow \$500 from Dinino without revealing that the loan was for Jackson. Jackson testified that one week he lost \$1800 on gambling. He asked Dinino for a couple of weeks to pay and Dinino said okay. Two weeks later, according to Jackson, Jackson told Dinino he needed another two weeks.

Jackson testified that Dinino said he did not want to hear any more stories and wanted money that Friday.

Jackson testified he got worried. However, Jackson did not pay that Friday. The next Wednesday, according to Jackson, Jackson said he wanted to pay everything off at \$25 a week. He said this to Dinino.

Jackson testified that he did not then reveal to Dinino his part in the \$500 Levine loan. Jackson testified that Dinino said he was crazy and had better come up with \$100 per week. Jackson's testimony was that he was proposing \$25 a week. Jackson testified that that

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Priday he revealed the situation regarding the Levine loan and insisted that it should be treated as his loan.

Jackson testified that there was an argument in which Jackson said Dinino would have to accept Jackson's terms or get nothing. Jackson testified that Dinino replied "For two cents I will bust your balls right here."

Jackson testified that the following week he agreed with Dinino to Pay \$100 a week for all obligations, including the Levine loan. Jackson testified that he considered there were two offices involved, one for gambling and one for lending, and that one of them might hurt him.

Jackson testified that he made payments for about three months of \$1200 to \$1300 total. Jackson testified that he then told Dinino he could not make it and asked for a reduction to \$10 per week. Dinino agreed to this.

Jackson testified that in mid-1972 DeVito
said that for the next three to four weeks payments should
be made to Louie, who then came nine or ten times.

According to Jackson on the second trip Jackson observed
Louie trying to collect from Shalkin.

Jackson testified that he asked Louie why he was acting so rough with Shalkin. Jackson testified

that Louie pulled out a revolver and said "For two cents
I will blow your brains out."

On cross examination Jackson testified that he was never physically harmed and that at the time he requested the payment reduction to \$10 he was not threatened. He testified that he was not impelled to complain to the police, but he was afraid.

money from Dinino beginning in 1972. The first loan was for \$200 plus interest to be paid at the rate of \$25 per week for twelve weeks. Shalkin testified that he made six or seven payments to Dinino and then became ill for two months; he had heart disease and diabetes.

Shalkin testified that when he got back to work he explained this to Dinino. Shalkin testified that Dinino said he might get a punch in the nose. Shalkin resumed his payments and got two or three additional loans. Shalkin paid DeVito on one occasion. Shalkin finished paying off his loans, according to his testimony.

On cross examination Shalkin testified that the punch in the nose remark could be a figure of speech and that Dinino never hurt him.

money from Dinino in the spring of 1971. At some point,

according to Penker's testimony, Dinino introduced him to DeVito and said DeVito was his partner and could receive payments when Dinino was not around.

ments to both Dinino and DeVito. There were further loans following this first loan, according to Penker's testimony. Penker testified that he overheard a conversation between DeVito and Cassese. Penker testified that Cassese said that DeVito was cheating him. Words were exchanged. DeVito said that he was not cheating him.

According to Penker's testimony, DeVito slapped Cassese in the face and Cassese's glasses fell off. One of the loans made to Penker according to his testimony was a \$500 loan to purchase a car. This loan we de in January, 1972. Early in the fall of 1972, according to Penker's testimony, the car broke down. He took it to Dinino's service station for repair. The bill was \$300 to be paid at \$50 per week.

Penker testified that in January, 1973 he had an argument with Dinino. Penker testified that he told Dinino that his remaining balance was \$100. Penker testified that Dinino said he wanted \$300 and that he wanted all his money in.

penker testified that Dinino said he was getting out and told Penker not to get him pissed off.

Penker testified that at this point Dinino was a changed man. Penker testified that he subsequently went to a second lender and borrowed \$200 to pay Dinino because he wanted Dinino off his back.

Penker testified that in May, 1973 he saw

Dinino who said that he wanted his remaining \$100. Penker

said he did not have it. Penker testified that Dinino

asked for a \$10 payment, after which Penker obtained a

\$10 money order which was given to Dinino.

Penker testified that in July, 1973 Dinino asked for the \$100 balance. Penker testified that he gave him a \$50 personal check endorsed or noted to refer to fictitious repairs on the automobile.

According to Penker's testimony this check bounced and Penker bought a \$50 money order which he then gave to Dinino.

On cross examination Penker stated or testified that no threats had been made to him and that he had a business-like relationship with Dinino. Penker also testified that DeVito had never threatened him.

Philip Cassese testified that he obtained loans from Dinino. Cassese testified that in the late

spring or early summer of 1972 he had a conversation with DeVito and that DeVito slapped him in the face and his glasses fell off. Cassese testified that he provoked the fight, that he said among other things that he had paid off fully the loan.

On cross examination Cassese said that he never felt coerced or threatened, that he made his borrowings voluntarily. Cassese testified that he made further payments after the slapping incident, but testified on cross examination that he would have made them anyway, if they were owed.

One final witness whose testimony I will summarize briefly is Samuel Herskowitz. There is no substantive count involving Samuel Herskowitz but Herskowitz is referred to in the conspiracy count, and, in any event, his testimony is in evidence and you are entitled to consider it.

Herskowitz testified that he met Dinino back in 1965 and made various loans from him thereafter. These loans continued into 1968 and thereafter. He testified that he would make payments to Dinino. Herskowitz testified that at one point his wife, who was one of the earners in the family, broke her ankle.

Herskowitz testified that he told Dinino about

this and said that he could not make the payments due at that time. Perskowitz said Dinino said this was fine, that he could make the vigorish payments of \$10 a week. He made these payments, eight in a row.

Herskowitz testified that he made these vigorish or interest payments until he became sick in July, 1970 from diabetes complications and a spine condition. He was out of work, according to his testimony, for three months. After two of these months, he went up visiting according to his testimony at Carters.

Herskowitz testified that Dinino grabbed

Herskowitz by the arm and asked "Where is the money you owe me?" Herskowitz testified that after a few minutes

Dinino calmed down and there was some agreement.

Herskowitz testified that he was afraid at the time because he was sick. Herskowitz testified that after about another month he resumed work and resumed making the payments to Dinino.

Herskowitz testified that one day Dinino introduced him to DeVito and said that DeVito could take payments when Dinino was not there.

Or cross examination Herskowitz testified that at the arm grabbing incident Dinino became friendly after about ten minutes and never hurt his physically. Herskowitz

testified that he was not afraid at the time of these transactions, but testified that he was afraid on the stand.

One further witness was Sherman Ronson, and as I explained to you earlier I have dismissed the substantive count relating to Sherman Ronson and I have stricken the references to Sherman Ronson from the conspiracy count.

However, Ronson testified. I do not think it would be of any use to summarize his testimony in any detail, but you are entitled to consider it to the extent you believe it relates logically to the case.

In summary Sherman Ronson testified to various loan transactions and did not testify to any threats of violence or any violence.

You have heard certain witnesses testify as to the character of DeVito as to his reputation for non-violence and peaceable character. You are entitled to consider that testimony as you do all other testimony, and in an appropriate circumstance, if you felt that the testimony was of this weight, it could be sufficient to create a reasonable doubt as to the guilt of DeVito.

I am not suggesting it should or should not.

I am simply indicating the type of consideration which you

are to consider in evaluating this testimony. However, if you believe that the government has proved that in these instances the defendant DeVito did violate the law and committed the criminal acts alleged, it is no excuse for DeVito, the fact that he had generally good character or character of the kind testified to by these witnesses.

In conclusion, if you fail to find beyond a reasonable doubt that the law has been violated or if you fail to find beyond a reasonable doubt that the defendants have committed the offenses charged in this indictment, then you should not hesitate for any reason to find a verdict of acquittal as to such unproved charge.

But, on the other hand, if you find that the law has been violated as charged as to the defendants, you should of course not hesitate because of sympathy or any other reason to render a verdict of guilty.

Upon your oath as jurors you cannot allow a consideration of the punishment which may be inflicted upon a defendant if convicted to influence your verdict in any way or in any sense to enter into your deliberations. The duty of imposing sentence rests exclusively on the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendants solely upon the basis of such evidence and the law.

view.

when you proceed to your deliberations, please have in mind that each of you is entitled to your own sincere good judgment. At the same time, it is expected that you will exchant views with your fellow jurors.

This obviously is the essential purpose of jury deliberations, to discuss and consider the evidence together and listen to the arguments of your fellow jurors. This means, of course, that you will present your own point of view as well as listening to and considering other points of

Any verdict rendered by you on any count must be the unanimous verdict of each one of you. While the objective of your deliberations is to reach a verdict if you can and while you must be unanimous to render a verdict, each individual juror must cast his vote in good conscience based on his ultimate judgment, after considering all points of view and testing his own beliefs against those of his colleagues.

If you find during your deliberations that you have need to hear any of the testimony read to you or any portion of the instructions read or clarified, please send a note with this inquiry to the Court through your foreman. There will be marshals outside the jury room and they will accept any notes that you need to convey to the

2 Court.

you are entitled to have the indictment in the jury room. As far as the exhibits, I do not think there are many exhibits, you can have those upon request.

Let me say one thing about the rereading of testimony or instructions. Such a repeating is sometimes necessary, but inevitably it causes an interruption in your deliberations.

what I suggest to you is that before you send out a note asking that something be reread, trade your recollections. Sometimes if one or two people cannot remember, somebody else in the jury can. So it is well worth trading your recollections before you request the rereading of any material.

Juror Number 1 will be the foreman, unless she declines to serve, and then you will elect another one of your members as your foreman.

Your verdict will be guilty or not guilty separately as to defendant Dinino and then as to defendant DeVito on each of the counts of the indictment. That verdict should be rendered in open court when you are ready. When you are ready with your verdict, please send a note through your foreman announcing that you are ready.

Please do not put the verdict in the note

because, as I said, the verdict should be rendered in open court.

If you will hold your places for just a minute, I will see if the lawyers have anything to add or to correct with respect to the charge and we will be right back with you.

charge

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misspoke on that --

MR. WALLACH: The acoustics are not good.

MR. ABZUG: I believe in your opening remarks, that's exactly what you stated, your Honor.

THE COURT: I do not mind clarifying that.

I think it should be balanced. If there is any chance from the compact of the compa

MR. WALLACH: I claim, your Honor, that your Honor stated that the jury could consider the fear of the witnesses or consider a bias against the government on the part of the witnesses, and I would suggest to your Honor that they also be told to consider the bias against the defendants.

THE COURT: That is a good point. That should certainly be in there. I will not take a chance on that.

MR. WALLACH: Also I take exception, I will be brief, to your Honor explaining the congressional concern and intent, the congressional intent underlying the statute.

Your Honor, the defendants except to sending the indictment into the jury. I would just add that your Honor I believe yesterday said that you are striking from the indictment the phrase "other criminal means."

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Yet if the indictment goes into the jury, that may be there.

At any rate, we take exception to the indictment going before the jury.

THE COURT: I will deny that. I think that there is obviously a certain amount of verbiage in the indictment which is now pretty much out of the case. I think I made that clear enough to the jury.

Are those all the exceptions you have?

MR. WALLACH: I have a few more.

THE COURT: All right.

MR. WALLACH: I believe your Tonor told the jury they can disregard the witness' testimony that he wasn't threatened.

THE COURT: No, I did not say disregard -
MR. WALLACH: That's the way I got it.

I think your Honor charged the jury, I take exception, the
jury can disregard the denial of fear by the witnesses.

THE COURT: I understand your point, but I will not change that portion.

I don't mean to distort anything, Judge.

MR. WALLACH: I take exception to your Honor's statement to the jury that they should not consider -- that friendship with the defendants on the part of the

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witnesses is no defense. It may not be a defense, but it certainly goes into the question of credibility.

THE COURT: I will not change that.

MR. WALLACH: Could I just ask the other lawyers whether they have anything else?

(Pause)

MR. WALLACH: That is all, Judge.

MR. BLOUSTEIN: Judge, not on the charge but on the recess that is coming up, could the lawyers be excused for an hour after the jury comes back because I think it could be assumed that they are not going to come back immediately upon their return from lunch, and if we could get an hour -- I just moved my office and --

THE COURT: The problem I have got is the lawyers can certainly be excused while the jury is at lunch. As far as your further request, it presents a problem to me in this way.

If the jury comes back with a note with a question, then I am stuck. If you and your client want to authorize Mr. Peluso and Mr. Wallach to stand by for you, I will allow it under those conditions.

MR. ABZUG: That presents certain conflicts, would it not, your Honor?

Mr. Peluso would represent Mr. Dinino --

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some common sense. If it got to be a point where it was mandatory that Mr. Bloustein be here -- let's cover that in a few minutes. Let's let the jury go and we will talk about that another minute or so.

MR. ABZUG: I eliminated Count 3 and the references to Sherman Ronson.

THE COURT: All right, here is a redact d copy of the indictment changed to omit the references to Sherman Ronson and the lawyers can look at this, and unless I had any objections, this will be sent to the jury right after they go into the jury room.

MR. WALLACH: That doesn't obviate the objection I already made to the indictment.

THE COURT: Oh, no, no, this is just on this one point as to form.

MR. BLOUSTEIN: The only change is the deletion or the reference --

THE COURT: Let's go out.

MR. BLOUSTEIN: Yes, I have no objection.

(In open court)

make one clarification of the charge. I think I had it in but in case I did not, I will just bring it out now.

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On the question of credibility of witnesses,

I mentioned to you that you could consider -- let me just
say what I meant to mention and I hope I mentioned and
I will mention it now, on the question of bias or hostility
or friendly feeling, obviously, you can and should consider
any indications that you see of any bias in favor of the
government or in favor of the defendants.

If you see any indication of any hostility towards the government or hostility to the defendants, that should be weighed.

You have observed the witnesses. In other words, it works both ways. If I did not indicate that in my earlier charge, then that was a mistake.

At this point we will dismiss the alternate with our thanks. You were our insurance policy against the collapse of the trial. If one of the regular jurors had become indisposed during the trial, we could not have gone on without you, but at this point only the twelve -- only twelve jurors can deliberate and reach a verdict, so we express our thanks to the alternate and you are excused.

(Alternate juror was excused)

(One marshal was duly sworn at this time)

THE COURT: The redacted copy of the indictment,

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

THE COURT: You have an exception. All defense counsel have an exception.

(Jury present)

THE COURT: We have a note, I will just read it into the record, received about 4:25 p.m.:

"We would like to cancel Mr. Levine's direct testimony but would like his grand jury testimony admitted as evidence. No further requests at this time for Jackson."

All right. We will read Mr. Levine's grand jury testimony admitted into evidence. I want to make it: clear, I am just literally taking you at your word. It is just the grand jury testimony, no surrounding questions or colloquy.

If you want any of that, you should of course ask for it.

(Record read)

(Jury resumed deliberations at 4:50 p.m.)
(In the robing room)

MR. WALLACH: Your Honor, all the attorneys
for the defendants are constrained to meetic Court for
a mistrial because of the reading of the grand jury testimony
that was read into the record before the jury at the trial.

It has been brought to my attent on that United

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States against Costello, federal grand juries can hear hearsay and all sorts of evidence which would otherwise be inadmissible. The grand jury proceeding is ex parte, it is under the control of the prosecutor, and I think --

THE COURT: We have gone into this. You have your record. The motion is denied.

I think we have to think about what we do as far as timing. The jury certainly indicated they wanted to go back and work. It is ten after five, but I assume there would be a time at which we would want to inquire whether they want to -- whether they are going to complete their work, they want to go for a meal this evening, or they want to go home.

What is your pleasure on that?

MR. ABZUG: My suggestion, your Honor, they really haven't had that much time to actually deliberate today, so I would at least suggest that we wait at least until 7:00 o'clock before we inquire --

THE COURT: You have to worry about food.

MR. BLOUSTEIN: I would go along with what Mr. Abzug just said, wait until 7:00, and if they don't reach a verdict at 7:00, I would then say let's adjourn until tomorrow morning.

MR. WALLACH: Wait a minute.

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make implicit threats against other or only one. That would be sufficient.

Does that answer your question?

JUROR NO. 1: I believe it does.

THE COURT: Thank you.

(Jury resumed deliberations at 11:20 a.m.)

(12:10 p.m. - in open court - jury present)

THE COURT: I have a note that the jury has reached a verdict, and you ask how to render them. The clerk, Mr. Zangara, will just ask you what your verdict is on each count for each defendant. I think this will be clear. I am sure Madam Foreman has her notes. So we will proceed.

THE CLERK: Madam Forelady, will you stand, please.

Madam Forelady, ladies and gentlemen of the jury, how do you find the defendant Dinino on Count 1?

THE FORELADY: Guilty as charged.

THE CLERK: On Count 2?

THE FORELADY: Guilty as charged.

THE CLERK: Count 4?

THE FORELADY: Guilty as charged.

THE COURT: Please, I want order in the

courtroom.

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2	THE CLERK: Count 5?
3	THE FORELADY: I am getting mixed up with the
4	numbers.
5	THE CLERK: Let's go over that again.
6	Count 1?
7	THE FORELADY: Guilty as charged.
8	THE CLERK: Count 2?
9	THE FORELADY: Guilty as charged.
10	THE CLERK: Count 4?
11	THE FORELADY: Guilty as charged.
12	THE CLERK: Count 5?
13	THE FORELADY: Guilty as charged.
14	THE CLERK: Count 6?
15	THE FORELADY: Not guilty.
16	THE CLERK: Count 7?
17	THE FORELADY: Guilty as charged.
18	THE CLERK: On defendant DeVito, how do you
19	find on Count 17
20	THE FORELADY: Guilty as charged.
21	THE CLERK: On Count 2?
22	THE FORELADY: Guilty as charged.
23	THE CLERK: Count 4?
24	THE FORELADY: Guilty as charged.
25	THE CLERK: Count 5?

THE FORELADY: Guilty as charged.

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THE CLERK: Count 6?

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THE FORELADY: Not guilty.

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THE CLERK: Count 7?

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THE FORELADY: Guilty as charged.

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THE COURT: Does anyone wish the jury polled?

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MR. BLOUSTEIN: Yes, if your Honor please.

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May we have the jury polled?

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THE COURT: Yes.

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THE CLERK: Ladies and gentlemen of the jury,

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listen to your verdict as it stands recorded.

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You say you find the defendant Dinino guilty

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on Counts 1, 2, 4, 5 and 7 and not guilty on Count 6.

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You say you find the defendant DeVito guilty

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on Counts 1, 2, 4, 5 and 7 and not guilty on Count 6.

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(To the question, "Is that your verdict,"

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all the jurors responded, "Yes".)

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THE COURT: Ladies and gentlemen, I want to thank you for your hard work and careful attention in this

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case and for your obvious careful work and good judgment

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in the verdicts that you have rendered.

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I want to say to you that now that you have concluded your deliberations, you are free to discuss the

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case as you wish.

PELUSO USA v. Devito STATE OF NEW YORK SS. COUNTY OF NEW YORK) ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 23 day of . 197 deponent served the within Appendix upon: U.S. Atty., Southern Dist. of NY attorney(s) for Appellee in this action, at 1 St. Andrews Pl. New York, N.Y. the address(es) designated by said attorney(s) for that purpose by depositing 22 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York. Sworn to before me, this , 197_6. day of_ WILLIAM BAILEY Notary Public, Stat e of New York No. 43-0132945

> Qualified in Richmond County Commission Expires March 30, 1976